

[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]⁶⁶⁰

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

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

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

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

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] 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 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).

[redacted]

[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

[REDACTED]

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]

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

[REDACTED] 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

⁷⁰³ Ibid. at 128, 86.

⁷⁰⁴ Ibid. at 129.

⁷⁰⁵ Testimony of Joseph Witsch (September 6, 2007) at 41.

⁷⁰⁶ Committee staff interview of Dr. Gary Percival (July 25, 2007).

⁷⁰⁷ Testimony of Joseph Witsch (September 6, 2007) at 107.

⁷⁰⁸ Ibid. at 109.

⁷⁰⁹ Committee staff interview of Christopher Wirts (January 4, 2008); Testimony of Joseph Witsch (September 6, 2007) at 113-14.

⁷¹⁰ Testimony of Joseph Witsch (September 4, 2007) at 112-113.

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

[REDACTED]

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

[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 Dunlavey to GEN Hill, *Counter-Resistance Strategies* (October 11, 2002).

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

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

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

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] Under "Physical Debilitation Tactics" the draft SOPs described various stress positions and said the purpose of using them was to "punish detainees."⁷⁵⁸ Among the stress positions listed was the "kneeling position," [REDACTED]⁷⁵⁹

Another stress position, the "standing position," [REDACTED]

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

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

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

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

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]

[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: *Educing Information: Interrogation: Science and Art* (December 2006) at 316.

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

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

[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]

[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]

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

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

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

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

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

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] 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] 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] 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]

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

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

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

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

[REDACTED] Mr. Witsch's fourth concern was that JPRA would have no control over how the information would be used. He asked:

What's been handed out in hard copy and electronically from [] us and the SERE community to meet numerous requests from everybody? We use [sic] to have some general idea when we were dealing with primarily the SERE community. Now it's anybody's guess where the JTTP has gone and how it's being incorporated and used.⁹⁰⁸

[REDACTED] Mr. Witsch added:

I know this is cool stuff and may provide some utility when dealing with DUCs. I'm not saying that we should totally remove ourselves from this endeavor. We must get a handle on all these people seeking information on our stuff within the USG and DOD and control the amount [of] exposure our SERE community/programs are getting. This is getting out of control!⁹⁰⁹

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] 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] 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 detainees (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]

[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 Access [sic] the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism* (March 3, 2003) (hereinafter "Romig to Walker (March 3, 2003)").

⁹⁷⁹ Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (Feb 27, 2003); Romig to Walker (March 3, 2003).

⁹⁸⁰ Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Lohr to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸¹ Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸² Rives to Walker (February 5, 2003); Rives to Walker (February 6, 2003); Sandkuhler to Walker (February 27, 2003).

⁹⁸³ Sandkuhler to Walker (February 27, 2003).

[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]

[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 Shiffin.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).

[REDACTED]

The resulting inquiry looked into only one of the alleged incidents of mistreatment -- an interrogation on [REDACTED]

¹⁰²² An interrogator, two analysts, and a member of the GTMO Behavioral Science Consultation Team (BSCT) who were interviewed for the inquiry "believed that the technique was appropriate, approved, applied properly, and was common practice . . ."¹⁰²³ Notwithstanding the statement that the technique was "common practice," the GTMO Interrogation Control Element (ICE) Chief Lt Col Ted Moss, his deputy, and the ICE operations officer said they were not aware compulsive exercise was being used.¹⁰²⁴

On May 2, 2003, MG Miller directed the Director of the Joint Intelligence Group (JIG), John Antonitis, to "cease of the use of the 'Fear-Up Harsh' interrogation technique," and said the inquiry had identified a need for re-training and corrective action to "ensure [interrogators] understand the approved interrogation techniques and practices and their limitations."¹⁰²⁵

(U) A subsequent memorandum called "Historic Look at Inappropriate Interrogation Techniques Used at GTMO" criticized the Commander's inquiry.¹⁰²⁶

The memo said the inquiry was too limited and found that the disciplinary action "did not address the command failures that allowed such activity to take place, despite apparent command sanctioning of the incidents."¹⁰²⁷ In fact, the Commander's inquiry failed to

[REDACTED]¹⁰²⁸ Nor did the inquiry review an allegation that, on April 17, 2003, a female GTMO interrogator sat on a detainee's lap

¹⁰²⁰ Memo from Diane Beaver to MG Geoffrey Miller. (U) *Results of Commander's Inquiry, re: Allegation of Inhumane Treatment of* [REDACTED] (April 30, 2003).

¹⁰²¹ Ibid.

¹⁰²² Ibid.

¹⁰²³ Ibid.

¹⁰²⁴ Ibid. at 2.

¹⁰²⁵ Memo from MG Geoffrey Miller for Commander, USSOUTHCOM, *Commander's Inquiry, Allegation of Inhumane Treatment of* [REDACTED] (May 3, 2003).

¹⁰²⁶ Memo, *Historic Look at Inappropriate Interrogation Techniques Used at GTMO* (undated) (hereinafter "Historic Look at Inappropriate Interrogation Techniques").

¹⁰²⁷ Ibid.

¹⁰²⁸ An April 2003 Memorandum for Record drafted by a contractor at GTMO alleged the technique was used on several occasions, including in late March 2003 as well as on April 7, 2003, and April 17, 2003. Memo for Record from ACS Contractor, *Possible Inappropriate Activities* (undated).

[REDACTED]

"making sexual affiliated movements with her chest and pelvis while again speaking sexually oriented sentences."¹⁰²⁹

[REDACTED]

(U) The second incident involved a female military interrogator who wiped what she told the detainee was menstrual blood on a detainee's face and forehead.¹⁰³³

[REDACTED] The "Historic Look at Inappropriate Interrogation Techniques Used at GTMO" memo found that there was "no clear information indicating disciplinary action for the 'lap dance' and simulated blood incidents."¹⁰³⁴

[REDACTED] The same memo concluded that "the incidents occurring during the Spring of 2003 signif[ied] a consistent problem at GTMO."¹⁰³⁵ It stated that it was "clear" that interrogators "may use several if not all of the techniques that require SECDEF notification."¹⁰³⁶ The memo also concluded that "interpretation of the SECDEF approved techniques has resulted in variations on how techniques are applied (i.e., is yelling, loud music and strobe lights environmental manipulation?)" and "[d]espite these revelations by interrogators, the supervisory chain of command reports that these techniques are not used."¹⁰³⁷ An FBI Special Agent serving at GTMO stated that "there was a time period where the interrogations were obtrusive enough that the interview rooms for an entire trailer were not available if one of these techniques were being utilized."¹⁰³⁸

[REDACTED] Other contemporaneous documents indicate that in addition to the use of strobe lights and loud music, techniques such as forced shaving, sensory deprivation and even implied threats

¹⁰²⁹ Ibid.

¹⁰³⁰ *Historic Look at Inappropriate Interrogation Techniques* at 2.

¹⁰³¹ Ibid.

¹⁰³² Ibid.

¹⁰³³ Ibid.

¹⁰³⁴ Ibid.

¹⁰³⁵ Ibid.

¹⁰³⁶ Ibid.

¹⁰³⁷ Ibid. at 3.

¹⁰³⁸ Email from FBI Special Agent (July 14, 2004).

[REDACTED]

of death were either used or planned for use in specific JTF-GTMO interrogations even after MG Miller's May 2, 2003 order to cease use of the "Fear-Up Harsh" interrogation technique. [REDACTED]

[REDACTED]

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

(U) Despite their repeated objections, law enforcement had been unable to stop JTF-GTMO from proceeding with its aggressive interrogation of Mohammed al Khatani in November 2002. An FBI Special Agent told the Committee that law enforcement believed at the time that the Khatani interrogation would define the conduct of future interrogations at GTMO.¹⁰³⁹ Documents relating to JTF-GTMO's plans for interrogating other high value GTMO detainees substantiated the belief of the FBI Special Agent.

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

[REDACTED] A memo dated on January 16, 2003 – the day after the Secretary of Defense rescinded interrogation techniques he had previously authorized for GTMO – described a plan for the interrogation of Mohamadou Walid Slahi. While Slahi's interrogation does not appear to have begun until July 2003, the January 16, 2003 memo described specific techniques JTF-GTMO intended to use in his interrogation, many of which mirrored those used in the Khatani interrogation. For example, the memo stated that interrogations would be conducted for up to 20 hours per day on Slahi, just as they had been for Khatani.¹⁰⁴⁰ The memo said that interrogators could pour water on Slahi's head to "enforce control" and "keep [him] awake."¹⁰⁴¹ Interrogators had also poured water over Khatani's head as a "method of asserting control."¹⁰⁴²

[REDACTED] The January 16, 2003 memo stated that "K-9 dogs can be present and made to bark to agitate [Slahi]."¹⁰⁴³ Similarly, military working dogs had been used in Khatani's interrogation "to agitate the detainee and provide shock value."¹⁰⁴⁴ The presence of dogs in the Slahi memo is notable as MG Miller said that, months earlier, he had "rejected [using dogs in interrogations] as an acceptable technique" and that dogs "were not to be used during active interrogation."¹⁰⁴⁵

[REDACTED] The January 16, 2003 memo also described techniques directed at breaking down Slahi's ego, including ridiculing him, making him wear a mask and signs labeling him a "liar," a "coward," or a "dog."¹⁰⁴⁶ The memo stated that interrogators would also instruct Slahi

¹⁰³⁹ Committee staff interview of FBI Special Agent (November 8, 2007).

¹⁰⁴⁰ Memo, *Methods and Approaches to Employ* (U); *Special Interrogation Operation of ISN 760* [REDACTED] (January 16, 2003) (hereinafter "*Interrogation of ISN 760* (January 16, 2003)").

¹⁰⁴¹ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁴² Memo, *Methods Employed X-Ray Interrogation ISN 63* [REDACTED] (January 17, 2003).

¹⁰⁴³ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Army IG, Interview of MG Geoffrey Miller (May 2, 2006).

¹⁰⁴⁶ *Interrogation of ISN 760* (January 16, 2003).

[REDACTED]

[REDACTED]

to bark and perform dog tricks "to reduce the detainee's ego and establish control."¹⁰⁴⁷ Khatani had also been forced to wear a dog collar and perform dog tricks, and interrogators had placed signs on him such as "liar," "coward," and "dog."¹⁰⁴⁸

[REDACTED] The January 16, 2003 memo described shaving Slahi's head and beard, making him wear a burka, and subjecting him to strip search "to reduce [his] ego by assaulting his modesty."¹⁰⁴⁹ Likewise, JTF-GTMO interrogators had shaved Khatani's head and beard and he had also been strip searched.¹⁰⁵⁰

[REDACTED] The memo stated that Slahi would be denied the opportunity to pray and described techniques to exploit "religious taboos," such as using a female interrogator in "close physical contact."¹⁰⁵¹ The memo also stated that interrogators would play music to "stress [Slahi] because he believes music is forbidden" and that light in Slahi's interrogation booth would be filtered "with red plastic to produce a stressful environment."¹⁰⁵² Khatani had also been denied prayer and a female interrogator touched him during his interrogation to increase his stress level.¹⁰⁵³ Khatani too had been isolated, a red filter was placed over the light in his interrogation booth, and music was used in his interrogation to create stress.¹⁰⁵⁴

[REDACTED] The January 16, 2003 memo indicated that JTF-GTMO interrogators planned to make use of a completely white room during Slahi's interrogation "to reduce outside stimuli and present an austere environment," that interrogators would use a strobe light in his interrogation booth to "disorient [Slahi] and add to [his] stress level," and that a hood would be placed on Slahi in the booth "to isolate him and increase feelings of futility."¹⁰⁵⁵

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

[REDACTED] In July 2003, six months after the above-described memo was produced and three months after the Secretary issued new interrogation authorities for GTMO, MG Miller submitted to SOUTHCOM a formal request for approval of a special interrogation plan for Slahi.¹⁰⁵⁶ In seeming contradiction to his May 2, 2003 order that the fear up harsh approach not be used in interrogations, the plan included many of the techniques described in the January 16,

¹⁰⁴⁷ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁴⁸ *Methods Employed X-Ray Interrogation ISN 63* [REDACTED] (January 17, 2003); *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁴⁹ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁵⁰ *Methods Employed X-Ray Interrogation ISN 63* [REDACTED] (January 17, 2003).

¹⁰⁵¹ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁵² *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁵³ *Methods Employed X-Ray Interrogation ISN 63* [REDACTED] (January 17, 2003).

¹⁰⁵⁴ *Ibid.*

¹⁰⁵⁵ *Interrogation of ISN 760* (January 16, 2003).

¹⁰⁵⁶ Joint Task Force Guantanamo Bay, Joint Interrogation Group, *ISN 760 Interrogation Plan* (July 1, 2003) (hereinafter "*ISN 760 Interrogation Plan* (July 1, 2003)").

[REDACTED]

2003 memo and stated that "the single most important aspect of these techniques is the initial shock of the treatment... [the] detainee will have the perception that his situation has changed drastically and that life can still become worse than what he is experiencing."¹⁰⁵⁷

[REDACTED] The first three to five days of interrogation were planned for Camp Delta.¹⁰⁵⁸ If Slahi was not cooperative, the plan proposed that military police in full riot gear take him from his cell, place him on a watercraft, and drive him around to make him think he had been taken off of the island. In reality, Slahi would be taken to Camp Echo where the interrogation was to continue. A memo describing that part of the plan said that military police working dogs would be used during his movement to "assist developing the atmosphere that something major is happening and add to the tension level of the detainee."¹⁰⁵⁹

[REDACTED] Interrogating Slahi at Camp Echo was intended to emotionally and psychologically weaken him through "drastic changes in his environment."¹⁰⁶⁰ Mirroring the Khatani interrogation plan, the Slahi plan included efforts to "replicate and exploit the 'Stockholm Syndrome' between detainee and his interrogators."¹⁰⁶¹ In his evaluation of the Khatani plan more than seven months earlier, the NCIS psychologist assigned to the CTF, Dr. Michael Gelles, had said that the idea of inducing the Stockholm syndrome implied that "the subject feels that he is to be killed and the information provided may in fact be distorted."¹⁰⁶²

[REDACTED] The GTMO plan stated that, while in the interrogation room at Camp Echo, Slahi would sit in a basic chair and "be shackled to the floor and left in the room for up to four hours while sound is playing continually."¹⁰⁶³ His time in the room was intended to "disorient him and establish fear of the unknown" and emphasize to Slahi that "the rules have changed" and nobody knows he is there."¹⁰⁶⁴ The practice of shackling him to the floor and subjecting him to loud music was to be repeated over several days, interrupted by actual interrogations. Slahi was to be permitted four hours of sleep every sixteen hours.¹⁰⁶⁵

[REDACTED] The plan stated that an interrogation room would be "modified in such a way as to reduce as much outside stimuli as possible. The doors will be sealed to a point that allows no light to enter the room. The walls may be covered with white paint or paper to further

¹⁰⁵⁷ ISN 760 Interrogation Plan (July 1, 2003).

¹⁰⁵⁸ Ibid.

¹⁰⁵⁹ Memo from LT Richard Zuley, *Objective: Transport ISN 760 from Camp Delta to Camp Echo* (undated).

¹⁰⁶⁰ ISN 760 Interrogation Plan (July 1, 2003).

¹⁰⁶¹ Ibid.

¹⁰⁶² Memo from Michael Gelles, Psy.D., *Review of JTF-GTMO Interrogation Plan Detainee 063 dtd November 21, 2002* (November 22, 2002).

¹⁰⁶³ ISN 760 Interrogation Plan (July 1, 2003) at 7.

¹⁰⁶⁴ Ibid.

¹⁰⁶⁵ On April 12, 2003 MG Miller sent GEN Hill an email requesting that SOUTHCOM provide a definition of sleep deprivation. On June 2, 2003, GEN Hill sent MG Miller a letter defining sleep deprivation as "keeping a detainee awake for more than 16 hours or allowing a detainee to rest briefly and then repeatedly awakening him, not to exceed four days in succession." MG Geoffrey Miller email to GEN James Hill (April 12, 2003).

[REDACTED]

eliminate objects the detainee may concentrate on. The room will contain an eyebolt in the floor and speakers for sound."¹⁰⁶⁶ The plan said that the "interrogation team will make detainee feel psychologically uncomfortable, emotionally uncomfortable, assert superiority over detainee, escalate stress, play loud music, and continue to condition detainee to menial tasks."¹⁰⁶⁷

[REDACTED] On July 18, 2003, SOUTHCOM Commander GEN James Hill forwarded a copy of GTMO's interrogation plan for Slahi to the Secretary of Defense. GEN Hill's cover memorandum stated that the interrogation plan "employs techniques not previously approved in your [April 16, 2003] memorandum" and requested the Secretary's approval "to use sound modulation (at decibel levels not harmful to hearing) and sleep deprivation."¹⁰⁶⁸ The memorandum also notified the Secretary that GTMO intended to isolate Slahi and use "pride and ego down" with him.¹⁰⁶⁹

[REDACTED] On July 24, 2003, Marshall Billingslea, the Principal Deputy Assistant Secretary of Defense for Special Operations / Low-Intensity Conflict (SOLIC), forwarded a memo notifying the Secretary of Defense that JTF-GTMO intended to isolate Slahi and recommending that he approve the use of "sleep deprivation" and "sound modulation at decibel levels not harmful to hearing."¹⁰⁷⁰ A handwritten note on the memo stated that "OGC concurs that this is legal. We don't see any policy issues with these interrogation techniques. Recommend you authorize."¹⁰⁷¹ Deputy Secretary of Defense Paul Wolfowitz approved the memo on July 28, 2003 and forwarded it to Secretary Rumsfeld, who added his approval on August 13, 2003.¹⁰⁷²

[REDACTED] The Slahi plan stated that it would "not be implemented until approved by higher authority."¹⁰⁷³ Despite that statement, memoranda for the record suggest techniques for which JTF-GTMO sought authority were used at least a month before the Secretary's written approval.

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

[REDACTED] Several memoranda for the record documenting Slahi's interrogation were written by JTF-GTMO personnel in July and August 2003. These memoranda indicate that at least one technique for which JTF-GTMO sought authority to use with Slahi, i.e., sound modulation, was used before written authority was actually granted by the Secretary of Defense.¹⁰⁷⁴ The

¹⁰⁶⁶ ISN 760 Interrogation Plan (July 1, 2003) at 8.

¹⁰⁶⁷ ISN 760 Interrogation Plan (July 1, 2003).

¹⁰⁶⁸ Memo from GEN James Hill to Secretary of Defense Donald Rumsfeld, *Interrogation Plan (IP) for Detainee Mohamadou Walid Slahi*, ISN [REDACTED] (July 18, 2003).

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Memo from Marshall Billingslea to Secretary of Defense, *Mohamadou Walid Slahi*, [REDACTED] (July 24, 2003).

¹⁰⁷¹ Ibid.

¹⁰⁷² Ibid.

¹⁰⁷³ ISN 760 Interrogation Plan (July 1, 2003) at 3.

¹⁰⁷⁴ Memo for Record, [REDACTED] MOUHAMADOO OULD SLAHI// (July 17, 2003).

[REDACTED]

memoranda also suggest the use of some techniques, such as forcing Slahi to stand for prolonged periods, for which no request for authority from SOUTHCOM or OSD appears to have been made by JTF-GTMO.¹⁰⁷⁵ In addition, while MG Miller had, more than two months earlier, said that interrogators were not to use the fear up harsh approach, the memoranda indicate that increasing Slahi's level of fear was an integral part of his interrogation and that one interrogator even implied to Slahi that he could be tortured or killed.

[REDACTED] The memoranda indicate that, on several occasions from July 8 through July 17, Slahi was interrogated by a masked interrogator called "Mr. X." On July 8, 2003 Slahi was interrogated by Mr. X and was "exposed to variable lighting patterns and rock music, to the tune of *Drowning Pool's* 'Let the Bodies Hit [the] Floor'."¹⁰⁷⁶ On July 10, 2003 Slahi was placed in an interrogation room handcuffed and standing while the air conditioning was turned off until the room became "quite warm."¹⁰⁷⁷ The next day, Slahi was brought into the interrogation booth and again remained standing and handcuffed while the air conditioning was again turned off.¹⁰⁷⁸ After allowing Slahi to sit, the interrogator later "took [Slahi's] chair and left him standing for several hours."¹⁰⁷⁹ According to the memo, Slahi was "visibly uncomfortable and showed signs of fatigue. This was 4th day of long duration interrogations."¹⁰⁸⁰

(U) On July 17, 2003, the masked interrogator told Slahi about a dream he had had where he saw "four detainees that were chained together at the feet. They dug a hole that was six feet long, six feet deep, and four feet wide. Then he observed the detainees throw a plain, unpainted, pine casket with the number 760 [Slahi's internment serial number (ISN)] painted on it in orange on the ground."¹⁰⁸¹

[REDACTED] On August 2, 2003 an interrogator told Slahi "to use his imagination and think up the worst possible thing that could happen to him" and asked him "what scares him more than anything else."¹⁰⁸²

(U) That same day, the interrogator told Slahi that to "use his imagination to think up the worst possible scenario he could end up in."¹⁰⁸³ The interrogator told Slahi that "beatings and physical pain are not the worst thing in the world. After all being beaten for a while, humans tend to disconnect the mind from the body and make it through. However, there are worse things than physical pain."¹⁰⁸⁴ The interrogator told Slahi that he would "very soon disappear down a

¹⁰⁷⁵ Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (July 10, 2003).

¹⁰⁷⁶ Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (July 17, 2003).

¹⁰⁷⁷ Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (July 10, 2003).

¹⁰⁷⁸ Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (July 11, 2003).

¹⁰⁷⁹ Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (July 11, 2003).

¹⁰⁸⁰ Ibid.

¹⁰⁸¹ Schmidt-Furlow Report at 24.

¹⁰⁸² Memo for Record, GTMO-0598, [REDACTED] MOUHAMADOO OULD SLAHI// (August 2, 2003).

¹⁰⁸³ DOJ IG report at 123

¹⁰⁸⁴ Schmidt-Furlow Report at 25.

[REDACTED]

very dark hole. His very existence will become erased . . . no one will know what happened to him and, eventually, no one will care."¹⁰⁸⁵

(U) At one point in his interrogation, Slahi was also shown a fictitious letter that had been drafted by the Interrogation Team Chief stating that his mother had been detained, would be interrogated, and if she were uncooperative she might be transferred to GTMO.¹⁰⁸⁶ The letter pointed out that she would be the only female detained at "this previously all-male prison environment."¹⁰⁸⁷

[REDACTED] On August 7, 2003, Slahi informed an interrogator that he had made a decision to cooperate.¹⁰⁸⁸ After questioning Slahi, his interrogator "congratulated [him] on his decision to tell the whole truth."¹⁰⁸⁹

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

[REDACTED] Five days after interrogators congratulated Slahi for his decision to "tell the whole truth," the Secretary of Defense approved JTF-GTMO's Special Interrogation Plan. Notwithstanding Slahi's apparent decision on August 7, 2003 to cooperate with interrogators, an August 21, 2003 email described preparations made to implement the Special Interrogation Plan.¹⁰⁹⁰ The email described sealing Slahi's cell at Camp Echo to "prevent light from shining" in and covering the entire exterior of his cell with tarp to "prevent him from making visual contact with guards."¹⁰⁹¹

[REDACTED] Weekly Reports from the JTF-GTMO Commander in September and October 2003 indicated that Slahi "continue[d] to be cooperative."¹⁰⁹² Despite that apparent cooperation, those same weekly reports stated that the interrogations were continuing in accordance with the approved interrogation plan. A contemporaneous document suggested that the interrogation may have begun affecting Slahi's mental state.¹⁰⁹³

[REDACTED] An October 17, 2003 email from a JTF-GTMO interrogator to LTC Diane Zierhoffer, a JTF-GTMO Behavioral Science Consultation Team (BSCT) Psychologist, stated that "Slahi told me he is 'hearing voices' now... He is worried as he knows this is not normal.... By the way ... is this something that happens to people who have little external stimulus such as daylight,

¹⁰⁸⁵ Ibid.

¹⁰⁸⁶ DoJ IG report.

¹⁰⁸⁷ Ibid.

¹⁰⁸⁸ Memo for Record, GTMO-0598 [REDACTED]

¹⁰⁸⁹ Ibid.

¹⁰⁹⁰ Email from JTF-GTMO IS2 to LT Richard Zuley and Capt Sean Wilson (August 21, 2003).

¹⁰⁹¹ Ibid.

¹⁰⁹² JTF-GTMO Weekly Thematic Focus: September 29-October 5, 2003 and October 6-12 2003.

¹⁰⁹³ JTF-GTMO Weekly Thematic Focus: September 29-October 5, 2003; October 6-12 2003; October 20-26, 2003; and November 3-9, 2003.

[REDACTED]

human interaction etc???? Seems a little creepy."¹⁰⁹⁴ LTC Zierhoffer responded "sensory deprivation can cause hallucinations, usually visual rather than auditory, but you never know... In the dark you create things out of what little you have..."¹⁰⁹⁵

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

[REDACTED]

[REDACTED] The view that the use of the aggressive techniques could affect Slahi's potential prosecution turned out to be accurate. LtCol Stuart Couch, a military prosecutor assigned to the Slahi case wrote in March 2004 that "prosecutors in our office are very concerned about the allegations of detainee abuse at GTMO and Afghanistan, and we have individually taken steps to address this issue. The techniques employed by the intelligence community in obtaining information is a policy decision that obviously affects our prosecution efforts, yet we are powerless to influence such activities."¹¹⁰⁰ After becoming aware of interrogations techniques to which Slahi had been subject, LtCol Couch refused to participate in the prosecution.¹¹⁰¹

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

(U) JTF-GTMO produced written weekly updates on significant activities including certain detainee interrogations. The updates were sent to the SOUTHCOM Commander and, according to MG Miller, were forwarded to the Joint Staff and Deputy Secretary of Defense Paul

¹⁰⁹⁴ Email from JTF-GTMO Interrogator to LTC Diane Zierhoffer (October 17, 2003).

¹⁰⁹⁵ Ibid.

¹⁰⁹⁶ Email from FBI Special Agent (December 5, 2003).

¹⁰⁹⁷ Ibid.

¹⁰⁹⁸ Ibid.

¹⁰⁹⁹ FBI Electronic Communication from Counterterrorism MLDU to Counterterrorism (May 18, 2004).

¹¹⁰⁰ Memo from LtCol Stuart Couch to Brigadier General Scott Black, *Office of Military Commissions Prosecution Operational Assessment* (March 18, 2004).

¹¹⁰¹ Committee staff interview of LtCol Stuart Couch (June 21, 2007).

[REDACTED]

Wolfowitz.¹¹⁰² MG Miller said that Deputy Secretary Wolfowitz was interested in the reports and his office would occasionally call GTMO to inquire about particular detainees.

[REDACTED] On July 13, 2003, the GTMO Commander sent an email, accompanied by his Weekly Update report, stating that GTMO had "finalized [REDACTED] plans."¹¹⁰³ According to the email, the objective [REDACTED] was to "fracture [REDACTED] detainee resistance to cooperation and to induce detainees to be forthcoming during interrogations."¹¹⁰⁴ The email stated that the U.S. Army Special Operations Command (USASOC) Psychological Applications Directorate Chief LTC Morgan Banks, who had hosted the JPRA training for GTMO interrogation personnel at Fort Bragg in September 2002, "conducted a [REDACTED] assessment visit" and had provided "very valuable insights."¹¹⁰⁵ The email stated that LTC Banks planned to return for a "follow-up visit in 60 days."¹¹⁰⁶

[REDACTED]

[REDACTED] In November 2003, several months after [REDACTED] MG Miller submitted two requests for authority to use sound modulation in interrogations [REDACTED] suggesting that MG Miller felt he needed authorization to use that technique in interrogations.¹¹⁰⁸ The Committee is not aware, however, of a similar request for authority to use strobe lights, loud music, and 15 hour interrogations in connection with [REDACTED]. According to the Church report, some interrogators considered strobe lights and loud music a form of environmental manipulation which had been authorized by the Secretary of Defense in April.¹¹⁰⁹ MG Miller's written requests for authority to use sound modulation in the [REDACTED] interrogations are at odds with that understanding.

¹¹⁰² Committee staff interview of MG Geoffrey Miller (December 5, 2007).

¹¹⁰³ Email from MG Geoffrey Miller to GEN James Hill (July 13, 2003).

¹¹⁰⁴ Ibid.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ Ibid.

¹¹⁰⁷ Church Report at 172.

¹¹⁰⁸ Memo from MG Geoffrey Miller to Commander, U.S. Southern Command, *Request for Approval of Interrogation Plan (IP) for [REDACTED]* (November 13, 2003) at 2-3 (hereinafter "MG Miller, *Request for Approval of IP for [REDACTED]*"); Memo from MG Geoffrey Miller to Commander, U.S. Southern Command, *Request for Approval of Interrogation Plan (IP) for ISN [REDACTED]* (November 13, 2003) at 2-3 (hereinafter "MG Miller, *Request for Approval of IP for [REDACTED]*").

¹¹⁰⁹ Church Report at 172.

[REDACTED]

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

(U) In October 2003, with the Slahi Special Interrogation Plan underway, the Criminal Investigative Task Force again issued guidance to its agents to stand clear of interrogations using aggressive techniques. The guidance mirrored that issued by CITF in December 2002, stating that "detainees will be treated humanely" and that "physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances."¹¹¹⁰ The October 2003 guidance stated:

[CITF personnel will] not participate in any interrogation that violates this policy. When CITF personnel are conducting a joint interrogation with another U.S. government organization, and a member of that other organization employs tactics that are, or appear to the investigator to be, inhumane or cruel and unusual, the CITF personnel will immediately disengage from the interrogation, report the incident to their CITF chain of command, and document the incident in a memorandum for record.¹¹¹¹

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

[REDACTED] On November 13, 2003, MG Miller sent two memoranda to GEN Hill at SOUTHCOM requesting approval of special interrogation plans for detainees [REDACTED].¹¹¹² Consistent with the Secretary of Defense's April authorization, MG Miller notified GEN Hill of JTF-GTMO's intent to isolate the detainees. In addition, MG Miller requested approval to conduct interrogations up to 16 hours and use various types of sound. The plans also implied the use of other techniques, such as sensory deprivation, that were not authorized by the Secretary in April. Both memos indicated that the techniques in the plans had been previously used in the Slahi interrogation. In many ways, the techniques proposed in the two new special interrogation plans mirrored techniques used in both the Slahi and Khatani interrogations.

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

[REDACTED]

¹¹¹⁰ DoD CITF, Memo for All Personnel Assigned to the DoD Criminal Investigative Task Force, *Interrogation Procedures Guidance (U)* (October 3, 2003).

¹¹¹¹ Ibid.

¹¹¹² MG Miller, *Request for Approval of IP for* [REDACTED]; MG Miller, *Request for Approval of IP for ISN* [REDACTED]

¹¹¹³ MG Miller, *Request for Approval of IP for* [REDACTED] at 2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. Special Interrogation Plan #4 (U)

[REDACTED]

¹¹¹⁴ Ibid. at 4.

¹¹¹⁵ Ibid.

¹¹¹⁶ Ibid. at 2.

¹¹¹⁷ Ibid. at 5.

¹¹¹⁸ Ibid. at 6.

¹¹¹⁹ Ibid. at 7.

¹¹²⁰ Ibid. at 11.

¹¹²¹ MG Miller, *Request for Approval of IP for ISN* [REDACTED] at 2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*c. SOUTHCOT and OSD Recommend Approval of Special
Interrogation Plans #3 & #4 (U)*

[REDACTED] On November 19, 2003, General Hill sent the [REDACTED]
interrogation plans to the Secretary of Defense.¹¹³⁰ In memoranda accompanying the plans,

¹¹²² Ibid. at 8.

¹¹²³ Ibid. at 1.

¹¹²⁴ Ibid. at 7.

¹¹²⁵ Ibid.

¹¹²⁶ Ibid. at 9.

¹¹²⁷ Ibid. at 10.

¹¹²⁸ Ibid. at 9.

¹¹²⁹ Ibid. at 10.

¹¹³⁰ Memorandum from General James Hill to Secretary of Defense Donald Rumsfeld, *Interrogation Plan (IP) for Detainee* [REDACTED] (November 19, 2003).

[REDACTED]

General Hill requested approval [REDACTED]

[REDACTED] Tom O'Connell, the Assistant Secretary of Defense for Special Operations / Low Intensity Conflict (SOLIC), attached a cover memo to the SOUTHCOM Commander's request, recommending to the Secretary of Defense that he approve the plans.¹¹³² A coordination sheet attached to that memo indicated that Daniel Dell'Orto, the Principal Deputy DoD General Counsel, had approved the plan on December 31, 2003 and Chairman of the Joint Chiefs of Staff Gen Myers had approved the plan on January 2, 2004. The date of the Chairman's approval (and possibly that of the Deputy DoD General Counsel) occurred after the Office of Legal Counsel (OLC) at the Department of Justice withdrew its March 14, 2003 legal memo upon which DoD had been relying for interrogation techniques.¹¹³³ The OLC's notification to DoD General Counsel Jim Haynes of that withdrawal occurred between December 25 and December 31, 2003.¹¹³⁴ Mr. Haynes told the Committee that "the fact that the Department didn't have that opinion to rely on... didn't mean that Mr. Dell'Orto or somebody ... could not [have] concluded that something was legal in the absence of that memo."¹¹³⁵

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

(U) In the final week of 2003, the OLC notified the Department of Defense that the March 14, 2003 OLC legal opinion, upon which DoD had been relying for interrogations, was being withdrawn.¹¹³⁶ According to the then-Assistant Attorney General for the OLC Jack Goldsmith, the March 2003 memo was one of a "short stack" of OLC opinions that his OLC colleague Patrick Philbin had identified, shortly after Mr. Goldsmith arrived at DoJ, as problematic and possibly containing "serious errors."¹¹³⁷ Also included in that "short stack" were the two August 1, 2002 "Bybee" memos – the "First Bybee" memo, which presented OLC's narrow interpretation of what constituted torture under U.S. law and the "Second Bybee" memo, which included OLC's "advice to the CIA regarding potential interrogation methods."¹¹³⁸

¹¹³¹ Ibid.

¹¹³² Action Memo from Thomas O'Connell for Secretary of Defense, *Interrogation Plans for* [REDACTED] (2003).

¹¹³³ *Coordination*, attached as Tab D to Action Memo from Thomas O'Connell for Secretary of Defense, *Interrogation Plans for* [REDACTED] (2003).

¹¹³⁴ Assistant Attorney General Goldsmith stated that he called the DoD General Counsel between Christmas and New Year 2003. Goldsmith, *The Terror Presidency* at 153.

¹¹³⁵ Committee staff interview of William J. Haynes II (April 25, 2008) at 295.

¹¹³⁶ Goldsmith, *The Terror Presidency* at 153-54.

¹¹³⁷ Ibid. at 142; Committee staff interview of Jack Goldsmith (February 4, 2008).

¹¹³⁸ Committee staff interview of Jack Goldsmith (February 4, 2008); Sixth Decl. of Marilyn A. Dom, ¶ 56, *American Civil Liberties Union, et al. v. Department of Defense, et al.*, No. 04-Civ. 4151 (January 5, 2007).

[REDACTED]

(U) After reviewing the opinions, Mr. Goldsmith identified two that he ultimately rescinded, the March 14, 2003 "Yoo Memo" (withdrawn in December 2003) and the August 1, 2002 "First Bybee" memo (withdrawn in June 2004).¹¹³⁹

(U) Mr. Goldsmith told the Committee that he called Jim Haynes in December 2003 and told him the March 14, 2003 OLC opinion was under review and could not be relied on by the Department.¹¹⁴⁰ That opinion had been presented to the Working Group as the controlling authority for all questions of domestic and international law and was the legal foundation for the Secretary's April 2003 authorization of techniques for GTMO. Mr. Goldsmith told the Committee that he informed Mr. Haynes in December 2003 that he had determined that only 20 of the 24 techniques authorized by Secretary Rumsfeld were lawful, and that the remaining four techniques were under review.¹¹⁴¹ Mr. Goldsmith also advised Mr. Haynes in December that the Department should come back to OLC for additional legal guidance before approving any technique not among those 24 specifically identified in the Secretary's April 2003 memo.¹¹⁴² Mr. Goldsmith told the Committee that Mr. Haynes did not inquire about the use of additional techniques during his tenure at OLC, which ended in June 2004.¹¹⁴³

[REDACTED] Notwithstanding the late December direction from the head of the OLC that DoD could not rely on the March 14, 2003 OLC memo, a March 26, 2004 memorandum for the record suggested that [REDACTED]

[REDACTED]¹¹⁴⁴ The frequent flyer program involved moving a detainee every few hours from one cell to another to disrupt their sleep. [REDACTED]

¹¹³⁹ Assistant Attorney General Goldsmith said that his personal standard for rescinding prior OLC memos was to rescind opinions only after he determined they were legally flawed and he could affirmatively provide guidance on "precisely what interrogation practices were legally available under a proper analysis." Goldsmith reiterated the second part of this standard when asked if he considered withdrawing the third "problematic" opinion, known as the "Second Bybee" memo. He told the Committee that he had not completed his analysis of the Second Bybee memo by the time he submitted his resignation and left the Department. Committee staff interview of Jack Goldsmith (February 4, 2008); Goldsmith, *The Terror Presidency* at 152.

¹¹⁴⁰ In his book, Goldsmith stated that he placed the call between Christmas and New Years 2003. Goldsmith, *The Terror Presidency* at 153.

¹¹⁴¹ In his interview with Committee staff, Mr. Goldsmith said he eventually determined that all 24 were lawful. That account differs slightly from Goldsmith's account in his book, in which he said that he told Mr. Haynes in December that all 24 techniques were lawful. *Ibid.* at 154; Committee staff interview of Jack Goldsmith (February 4, 2008).

¹¹⁴² Committee staff interview of Jack Goldsmith (February 4, 2008).

¹¹⁴³ *Ibid.*

¹¹⁴⁴ Schmidt-Furlow Report at 10.

¹¹⁴⁵ Memo for Record, *Continuous Cell Transfer (Frequent Flyer Program)* (March 26, 2004).

[REDACTED]

[REDACTED] Continuous cell transfer was discussed at least as early as August 2003. An August 3, 2003 email from GTMO's ICE Operations Officer described interrogating a detainee for 15 hours, allowing him 5 hours of uninterrupted rest in his cell and then moving the detainee to a new cell every half hour until the 24 hour period expired whereby, according to the Operations Officer the cycle would restart and "the fun begins again."¹¹⁴⁶

(U) According to an FBI agent who was on assignment to GTMO in fall 2003, the agent received a briefing "that non cooperative detainees could be placed on a list for a specific interrogation technique involving interruption of sleep pattern, called the 'frequent flyer program.'"¹¹⁴⁷ The agent stated that detainees were moved with all of their personal belongings and that the duration of the program for detainees "seemed to depend on the cooperativeness of the detainee."¹¹⁴⁸ In fact, an investigation by the Department of Justice Inspector General found that "many FBI agents described a program of sleep disruption employed by the military as designed to disorient detainees and thereby obtain their cooperation, which was known as the 'frequent flyer program.'"¹¹⁴⁹

(U) Keeping detainees awake except for a period of four-hours of uninterrupted sleep using "Continuous cell transfer" or other means was not on the list of 24 techniques OLC advised the DoD General Counsel were permitted. The Committee is unaware of a request from DoD to OLC for legal guidance on whether that technique comported with techniques on that list of 24 approved by the Secretary.

XI. Development of Interrogation Policy in Afghanistan (U)

[REDACTED] After the start of Operation Enduring Freedom in October 2001, [REDACTED] deployed a Special Mission Unit (SMU) Task Force (TF) to Afghanistan with a mission [REDACTED]¹¹⁵⁰ While SMU TF operators conducted a limited amount of direct questioning, or, "screening" of detainees while on the battlefield, it appears that they did not conduct interrogations until at least October 2002.

(U) Prior to that point, SMU personnel had observed interrogations conducted by Combined Joint Task Force 180 (CJTF-180), which had assumed control of U.S. and coalition

¹¹⁴⁶ Email from Maj. James Rogers to COL Jack Farr (August 3, 2003).

¹¹⁴⁷ FBI Electronic Communication from Administrative Services (SAAPU) to Inspection Division (July 15, 2004).

¹¹⁴⁸ Ibid.

¹¹⁴⁹ DoJ IG Report at 183.

¹¹⁵⁰ [REDACTED] Department of Defense, *Interrogation Special Focus Team Report on Special Mission Unit Interrogation Practices in Operation Enduring Freedom and Operation Iraqi Freedom* (October 28, 2004) at 3 (hereinafter "Church Special Focus Team Report"). As part of his investigation of detention operations and detainee interrogation techniques, Vice Admiral Albert Church examined interrogation techniques used by SMU in the USCENTCOM area of responsibility. VADM Church's main report, released in March 2005, did not discuss the SMUs. Rather an Interrogation Special Focus Team, under the auspices of VADM Church's review, issued a separate, classified annex that discussed SMU interrogation practices in both Afghanistan and Iraq. Though completed in October, 2004, the SMU annex was not provided to the Senate Armed Services Committee until July 26, 2006.

[REDACTED]

forces in Afghanistan at the end of May 2002.¹¹⁵¹ In addition to tactical questioning and screening on the battlefield, CJTF-180 personnel conducted more thorough interrogations at detention facilities at Kandahar and Bagram. Between October 2001 and January 2003, the only written guidance for interrogators operating in Afghanistan appears to have been Army Field Manual 34-52. There were no Standard Operating Procedures (SOPs), however, to guide the implementation of the doctrine outlined in the Field Manual.

[REDACTED] In fall 2002, the SMU conducted assessments of interrogation operations at GTMO and [REDACTED] at Bagram Airfield. Those assessments generated discussion about whether the SMU TF should conduct its own interrogations, separate and apart from CJTF-180, and which interrogation techniques should be permitted.

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

[REDACTED] [REDACTED] From October 8 through October 10, 2002, an SMU TF assessment team from Afghanistan visited JTF-170 at Guantanamo Bay.¹¹⁵² The visit occurred just as JTF-170 personnel at GTMO were finalizing a request, submitted to SOUTHCOM on October 11, 2002, to use interrogation techniques including stress positions, removal of clothing, deprivation of light and auditory stimuli, hooding, use of detainees phobias such as dogs, exposure to cold weather or water, and non-injurious physical contact such as grabbing, poking and pushing.¹¹⁵³

[REDACTED] A trip report prepared by the SMU TF assessment team, dated October 11, 2002, summarized the visit to GTMO. The report stated that the SMU TF team met with members of the JTF-170 Behavioral Science Consultation Team (BSCT).¹¹⁵⁴ Members of the BSCT had recently attended training conducted by SERE instructors from JPRA and in the week prior to the SMU TF team's visit, two of them had written the first draft of GTMO's request for new interrogation authorities.¹¹⁵⁵

[REDACTED] [REDACTED] According to the SMU TF assessment team's trip report, GTMO "interrogation team psychologists" discussed interrogation approaches, including use of "religious oriented superstitions, varied schedules, shame, various disruptions of daily routines, and using ethnic interrogators."¹¹⁵⁶ The SMU team's trip report also suggested that the team discussed with the JTF-170 Interrogation Control Element (ICE) Chief David Becker, the need

¹¹⁵¹ [REDACTED] *Church Special Focus Team Report at 6-7.*

¹¹⁵² Memo for the Record, *GTMO Assessment Visit* (October 11, 2002)

¹¹⁵³ Ibid. at 3; LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

¹¹⁵⁴ Memo for the Record, *GTMO Assessment Visit* (October 11, 2002).

¹¹⁵⁵ *USASOC Requirement to Provide Exploitation Instruction* (September 24, 2002); BSCT, *Counter-resistance Strategies*.

¹¹⁵⁶ Memo for the Record, *GTMO Assessment Visit* (October 11, 2002)

[REDACTED]

for interrogators to have "SERE instructors' training for legal aspects of prisoner handling" and stated that a "JPRA [Mobile Training Team] appears to be the best option" for the training.¹¹⁵⁷

[REDACTED] On October 26, 2002, after the SMU TF assessment team returned to Afghanistan, a proposal was briefed to the SMU Commander.¹¹⁵⁸

[REDACTED]¹¹⁵⁹ The briefing stated that with detainees, that "current interrogation methods are not producing actionable intelligence," and that "mainstream interrogation [tactics, techniques, and procedures] have limited success against [al Qaeda] resistance techniques."¹¹⁶⁰ The briefing proposed new interrogation techniques such as the use of strip searches for "degradation;" hoods for "sensory deprivation;" "sensory overload" through lights, darkness, noises, and dogs; and manipulation of the detainees' environment through "cold, heat, wet, discomfort, etc..."¹¹⁶¹ Stripping detainees, the use of hoods, the use of dogs, and environmental manipulation were among the interrogation techniques requested by GTMO.¹¹⁶²

[REDACTED] A memo entitled "Detainee Operations," dated October 27, 2002 (the day after the SMU TF proposal was briefed), described the SMU team's visit to GTMO as well as the team's assessment of interrogation operations at Bagram.¹¹⁶³ With respect to operations at GTMO, the memo stated that "Due to a lack of effective national-level guidance, the GTMO staff is analogous to a weak set of parents unsure of their role and parental skills who get manipulated by clever and strong-willed children."¹¹⁶⁴ The memo stated that the SMU TF team "assisted the [GTMO] staff in seeking advice and training from the JPRA staff regarding effective interrogation techniques."¹¹⁶⁵

[REDACTED] The October 27, 2002 memo described some interrogators at Bagram as "out-matched" and stated that the SMU TF team's observations of both GTMO and Bagram led to the conclusion that [REDACTED]¹¹⁶⁶

¹¹⁵⁷ Ibid. LTC Beaver, the GTMO SJA, specifically recommended in her review of the October 11, 2002 techniques memo submitted by JTF-170 (GTMO) to SOUTHCOM, that "the interrogators be properly trained in the use of the approved methods of interrogation," which included techniques similar to those used in SERE programs. LTC Beaver, *Legal Brief on Proposed Counter-Resistance Strategies* at 5.

¹¹⁵⁸ Church Special Focus Team Report at 6.

¹¹⁵⁹ [REDACTED] Battlefield Exploitation Proposal (undated) at 2.

¹¹⁶⁰ Ibid. at 4.

¹¹⁶¹ Ibid. at 5.

¹¹⁶² LTC Phifer to MG Michael Dunlavey, *Request for Approval of Counter-Resistance Strategies*.

¹¹⁶³ Memo, *Detainee Operations* (October 27, 2002) at 1.

¹¹⁶⁴ Ibid.

¹¹⁶⁵ Ibid. at 1-2.

¹¹⁶⁶ Ibid. at 2.

[REDACTED]

[REDACTED] The October 27, 2002 memo also outlined a rationale for the SMU to conduct its own interrogations. [REDACTED]

[REDACTED]¹¹⁶⁷ The memo recommended the "imaginative but legal use of non-lethal psychological techniques (i.e., battlefield noises/chaos, barking dogs, etc.)" as well as stress techniques such as "sensory deprivation (hoods, silence, flex cuffs), sensory overload (shouting, gun shots, white noise, machinery noise) and manipulation of the environment (hot, cold, wet, windy, hard surfaces)."¹¹⁶⁸

[REDACTED] A slide presentation dated the following week, described a concept of operations (CONOP) for SMU TF detainee exploitation.¹¹⁶⁹ [REDACTED]

[REDACTED]¹¹⁷⁰ The presentation argued that actionable intelligence might be produced "via psychological/physical stress" and listed "sensory deprivation," "sensory overload – lights darkness, noises, and dogs," "environment – cold, heat, wet and discomfort" and "psychological deception leading to learned helplessness and increase compliance."¹¹⁷¹

[REDACTED] The SMU TF also developed a "Decision Briefing" with the goal of gaining the CJTF-180 Commanding General LTG Dan McNeil's approval for the SMU TF to construct and operate its own interrogation facility for high value detainees co-located at the Bagram Collection Point.¹¹⁷² The briefing stated that CJTF-180 was focused on the detention mission rather than the interrogation mission, that "no advanced interrogation techniques" including "sensory deprivation/overload, sleep deprivation, psychological manipulation" were employed by CJTF-180, and that current procedures were having only "limited success[es]."¹¹⁷³

[REDACTED] While the SMU briefing noted that "advanced interrogation techniques" were not in use at Bagram prior to November 2002, Army investigations into the deaths of two detainees at Bagram in early December revealed that, by early December 2002, at least one of the techniques, sleep deprivation, was apparently in wide use there.

B. The Deaths of Dilawar and Habibullah (U)

(U) [REDACTED] In December 2002, two detainees were killed while detained by CJTF-180 at Bagram. Though the techniques do not appear to have been included in any written interrogation

¹¹⁶⁷ Ibid. at 3.

¹¹⁶⁸ Memo, *Detainee Operations* (October 27, 2002) at 3.

¹¹⁶⁹ [REDACTED] Battlefield Detainee Exploitation CONOP (November 3, 2002).

¹¹⁷⁰ Ibid. at 5. It is not clear from the slides whether any of the interrogation training was formal or informal training. There is no indication that any of the SMU personnel available for the mission had any formal DoD interrogation or debriefing training.

¹¹⁷¹ [REDACTED] Battlefield Detainee Exploitation CONOP (November 3, 2002) at 7-8.

¹¹⁷² [REDACTED] Interrogations Operations Decision Briefing (undated).

¹¹⁷³ Ibid.

[REDACTED]

policy at Bagram, Army investigators concluded that the use of stress positions and sleep deprivation combined with other mistreatment at the hands of Bagram personnel, caused or were direct contributing factors in the two homicides.¹¹⁷⁴ In the wake of the deaths of Habibullah and Dilawar, CJTF-180 and the SMU TF began developing written standard operating procedures (SOPs) for interrogations.

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

[REDACTED] On November 1, 2002, a month before the two detainee deaths at Bagram, the SMU TF Staff Judge Advocate (SJA) analyzed legal authorities and constraints relevant to SMU TF personnel's participation in interrogations.¹¹⁷⁵ The SJA's analysis is reflected in a memo which was provided to the Committee in redacted form. Although the particular interrogation techniques in use [REDACTED] were redacted from the version of the memo shared with the Committee, unredacted portions of that memo discuss the SMU TF's concerns about those techniques.¹¹⁷⁶

[REDACTED] Although the memo stated that while, in the author's opinion, "none of the interrogation techniques used or observed by [redacted] personnel constitutes 'torture,'" it also stated that "another observer might disagree."¹¹⁷⁷ In addition, the memo stated that one of the [redacted] techniques "could rise to the level of torture if applied in such a way and for such a period of time that it rises to the level of severe physical pain or suffering."¹¹⁷⁸ It also said that "although the interrogation techniques may not constitute 'torture' they may rise to the level of cruel, inhuman or degrading treatment proscribed by international law."¹¹⁷⁹

[REDACTED] The November 1, 2002 memo assessed the risks that SMU personnel might face by participating in interrogations [REDACTED]

[REDACTED] particularly if there is media scrutiny.¹¹⁸⁰ The memo referenced applicable DoD policies and Department of the Army (DA) regulations requiring the humane treatment of detainees and noted that although they might not apply to [REDACTED] operating in a non-DoD facility, "U.S. military personnel remain subject to those authorities if [military personnel] participate in or run the interrogations."¹¹⁸¹ According

¹¹⁷⁴ U.S. Army Criminal Investigation Command Bagram Branch Office Memo, *CID Report of Investigation - FINAL -0134-02-CID36923533* (October 8, 2004).

¹¹⁷⁵ Memorandum for [Redacted], *Legal Analysis of [Redacted] Personnel Participating in Interrogation at [Redacted] Detention Facility [Redacted]* (November 1, 2002) at 1 (hereinafter "*Personnel Participating in Interrogation at [Redacted] Detention Facility*").

¹¹⁷⁶ *Personnel Participating in Interrogation at [Redacted] Detention Facility*.

¹¹⁷⁷ *Ibid.* at 4.

¹¹⁷⁸ *Ibid.* at 5.

¹¹⁷⁹ *Ibid.* at 2.

¹¹⁸⁰ *Ibid.* at 1.

¹¹⁸¹ *Ibid.* at 4.

[REDACTED]

to the memo, "these requirements arguably extend to military personnel even if 'detailed' to [REDACTED]"¹¹⁸²

[REDACTED] The memo warned that "we are at risk as we get more 'creative' and stray from standard interrogation techniques and procedures taught at DoD and DA schools and detailed in official interrogation manuals."¹¹⁸³

[REDACTED] In a June 18, 2004 memorandum to the Naval Inspector General, [REDACTED] said that after the SMU TF SJA wrote his opinion, the Commander of the SMU TF "restricted personnel from further involvement [REDACTED] except for information sharing."¹¹⁸⁴

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

[REDACTED] On January 10, 2003 the SMU Task Force Commander in Afghanistan approved the first interrogation standard operating procedure (SOP) for the SMU Task Force.¹¹⁸⁵ In addition to identifying approaches from the Army Field Manual 34-52, the SOP approved four additional interrogation "techniques" for use by SMU interrogators: isolation, multiple interrogators, stress positions, and sleep deprivation.¹¹⁸⁶ Three of the four techniques approved by the SMU TF – isolation, stress positions, and multiple interrogators – were among those authorized by the Secretary of Defense for use at GTMO on December 2, 2002.¹¹⁸⁷ The fourth technique – sleep deprivation (defined by the SMU TF as "no less than 4 hours sleep in a 24-hour period") – was, in effect, authorized by the Secretary on December 2, 2002, when he authorized the use of 20 hour interrogations.¹¹⁸⁸

[REDACTED] According to a summary of his statement to Church Report investigators, the SMU interrogator who drafted the SMU SOP reviewed GTMO's list of requested counter-resistance techniques prior to drafting the SOP and discussed incorporating some of those techniques into the SMU's policy.¹¹⁸⁹ While the interrogator told Church Report investigators that the interrogation techniques in use at GTMO "did not influence" the technique selection for

¹¹⁸² Ibid.

¹¹⁸³ Ibid. at 6.

¹¹⁸⁴ Memo from USSOCOM Staff Judge Advocate for the Naval Inspector General, *Response to Questions for the Record (U)* (June 18, 2004).

¹¹⁸⁵ Department of Defense, [REDACTED] *Battlefield Interrogation Team Standing Operating Procedures* (10 January 2003); *Church Special Focus Team Report* at 7.

¹¹⁸⁶ Two of those techniques – stress positions and sleep deprivation – were already in use by CJTF-180 interrogators prior to the approval of the SMU TF SOP. *Church Special Focus Team Report* and Committee staff interview of CPT Carolyn Wood (February 8, 2008).

¹¹⁸⁷ *Church Special Focus Team Report* at 8.

¹¹⁸⁸ *Church Special Focus Team Report*, Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

¹¹⁸⁹ Summary of Statement of SMU Member with Church Special Focus Team Report Investigator (September 15, 2004).

[REDACTED]

the SMU SOP, an investigation completed by the Department of Defense Inspector General in 2006 concluded that the SMU SOP "was influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002."¹¹⁹⁰

[REDACTED] In addition, the SMU TF Legal Advisor who served in Afghanistan from late November 2002 until early January 2003 (just before the SMU TF SOP was issued) said that the Secretary of Defense's December 2, 2002 authorization generated discussion at the SMU TF and influenced his thinking about interrogation techniques.¹¹⁹¹ A legal review of the SMU TF's January 10, 2003 interrogation SOP, conducted by the SMU Legal Advisor who took over that job in early January, supports the DoD Inspector General's conclusion that the SOP was influenced by the Secretary's December 2, 2002 authorization.¹¹⁹² In his legal review, the SMU TF Legal Advisor referred to the techniques authorized by the Secretary of Defense for GTMO, including stress positions, isolation, deprivation of light and auditory stimuli, hooding, 20 hour interrogations, removal of clothing, and the use of dogs to induce stress, and stated:

SECDEF's approval of these techniques provides us the most persuasive argument for use of 'advanced techniques' as we capture possible [high value targets] or those that are enablers and have intelligence value of [high value targets] . . . the fact SECDEF approved use of the [CAT I/II/III] techniques at GTMO, subject to the same laws, provides an analogy and basis for use of these techniques [in accordance with] international and U.S. law.¹¹⁹³

[REDACTED] The SMU TF Legal Advisor concluded that the interrogation SOP proposed for use by the SMU was in accordance with their "guidance and constraints," and therefore, "legally sufficient."¹¹⁹⁴ In addition, the Legal Advisor recommended that the SMU "continue to approach CENTCOM for clarifying guidance on whether the techniques apparently approved for use at GITMO by SECDEF . . . are applicable or can become applicable for use in the CENTCOM AOR [area of responsibility]. If so incorporate those Category II techniques that are deemed necessary for [the SMU's] success."¹¹⁹⁵

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

[REDACTED] Following his January 15, 2003 rescission of authority for GTMO to use the interrogation techniques he had previously authorized in December 2002, Secretary Rumsfeld

¹¹⁹⁰ Ibid.; DoD IG Report at 15-16.

¹¹⁹¹ Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

¹¹⁹² Memo from [REDACTED] Legal Advisor for COMJTF-5, *Legal Review of [REDACTED] Battlefield Interrogation Team & BIT SOP* (January 11, 2003) at 11 (hereinafter "*Legal Review of [REDACTED] Battlefield Interrogation Team & BIT SOP* (January 11, 2003)").

¹¹⁹³ *Legal Review of [REDACTED] Battlefield Interrogation Team & BIT SOP* (January 11, 2003) at 11.

¹¹⁹⁴ Ibid.

¹¹⁹⁵ Ibid. at 16. The SMU TF Legal Advisor also stated presciently that, "we are at risk as we get more 'creative' and stray from standard interrogation techniques and procedures taught at DoD and Service schools and detailed in official interrogation manuals."

[REDACTED]

directed the establishment of the DoD Working Group on Interrogations.¹¹⁹⁶ As discussed above, the Working Group requested that the Joint Staff provide a list of interrogation techniques "currently in effect or previously employed in CENTCOM and SOUTHCOM, techniques the combatant commanders have found to be effective, and techniques the combatant commanders desire to implement with accompanying rationale."¹¹⁹⁷ CENTCOM sent the Working Group's request to CJTF-180 and, in response, the CJTF-180 Deputy Staff Judge Advocate (SJA) LTC Robert Cotell produced a January 24, 2003 memo describing "current and past" interrogation techniques used by CJTF-180 interrogators.¹¹⁹⁸ LTC Cotell's memo was sent to the Working Group and to the Office of the Secretary of Defense.¹¹⁹⁹

[REDACTED] In his January 24, 2003 memo, LTC Cotell identified interrogation techniques used by CJTF-180, including up to 96 hours of isolation; the use of female interrogators to create "discomfort" and gain more information; sleep adjustment, defined as "four hours of sleep every 24 hours, not necessarily consecutive;" use of individual fears; removal of comfort items; use of safety positions; isolation; deprivation of light and sound in living areas; the use of a hood during interrogation; and mild physical contact.¹²⁰⁰

[REDACTED] LTC Cotell's January 24, 2003 memo also recommended use of five additional techniques, including "deprivation of clothing" to put detainees in a "shameful, uncomfortable situation;" "food deprivation;" "sensory overload - loud music or temperature regulation;" "controlled fear through the use of muzzled, trained, military working dogs;" and "use of light and noise deprivation."¹²⁰¹

(U) LTC Cotell's memo included techniques that were among those Secretary Rumsfeld had authorized for use at GTMO in December 2002. CJTF-180 had obtained a list of those techniques prior to LTC Cotell drafting his January 24, 2003 memo.¹²⁰²

(U) JTF-GTMO's Interrogation Control Element (ICE) Chief Lt Col Ted Moss stated that sometime in January 2003, CPT Carolyn Wood, the Officer in Charge (OIC) of the Intelligence Section at the Bagram Collection Point asked JTF-GTMO about their "parameters" for interrogation.¹²⁰³ According to Lt Col Moss, the GTMO Operations Officer faxed the Secretary of Defense's December 2, 2002 memo authorizing interrogation techniques to CJTF-180. CPT

¹¹⁹⁶ See section VIII.

¹¹⁹⁷ [REDACTED] Memo, *Proposed Detainee Interrogation Working Group Responsibilities (Initial)* (undated) at 1.

¹¹⁹⁸ Church Report at 197; Memorandum from CJTF-180-OPS LAW for CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 1 (hereinafter "*CJTF 180 Interrogation Techniques* (January 24, 2003)").

¹¹⁹⁹ US Central Command Action Processing Form, *Approval for the Use of Certain Interrogation Techniques in CJTF-180's AOR* (April 4, 2003). Memo from Deputy Commander (Forward) U.S. Central Command, *Responses to Request for Information from VADM Church* (August 6, 2004).

¹²⁰⁰ *CJTF 180 Interrogation Techniques* (January 24, 2003) at 8. The Church Report called the distinction between stress positions and safety positions at the Bagram Collection Point "largely academic." Church Report at 200.

¹²⁰¹ *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4-5, 9.

¹²⁰² Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002); *CJTF 180 Interrogation Techniques* (January 24, 2003).

¹²⁰³ Committee staff interview of Lt Col Ted Moss (October 17, 2007).

[REDACTED]

Wood said that, in early January, she saw a "secret power point presentation" containing the techniques authorized for use at GTMO but did not recall where she had obtained the power point presentation.¹²⁰⁴ Lt Col Moss did not know if JTF-GTMO had also sent CJTF-180 the Secretary's letter that rescinded the use of those techniques.¹²⁰⁵

[REDACTED] In his January 24, 2003 memorandum, LTC Cotell, the CJTF-180 Deputy Staff Judge Advocate acknowledged that the Secretary of Defense had rescinded authority to use similar interrogation techniques at GTMO, stating that "[p]rior to their rescission, CJTF-180 used selected techniques contained in SOUTHCOM's Cat II & III techniques . . ."¹²⁰⁶ Notwithstanding that knowledge, however, the Church Report concluded that "in the absence of any contrary guidance from CENTCOM, JCS, or OSD," CJTF-180 "considered the techniques in their [January 24, 2003] memo as available for use."¹²⁰⁷ A summary of an interview with the Deputy SJA at CENTCOM stated that "the methodologies approved for GTMO... would appear to me to be legal interrogation processes. [The Secretary of Defense] had approved them. The General Counsel had approved them... I believe it is fair to say the procedures approved for Guantanamo were legal for Afghanistan."¹²⁰⁸

(U) In 2004, the Deputy Commander (Forward) U.S. Central Command LTG (later GEN) John Abizaid stated that the January 24, 2003 memorandum had been "thoroughly reviewed" by the Working Group.¹²⁰⁹

[REDACTED] Within three weeks of the January 24, 2003 memo, the SMU TF in Afghanistan added the use of dogs to its interrogation policy.¹²¹⁰ Just over two months after the Secretary had authorized dogs for use in interrogations at JTF-GTMO, the technique had become part of interrogation SOPs for both the conventional forces and the SMU TF in Afghanistan.

F. CENTCOM Raises Concerns About Interrogation Techniques (U)

[REDACTED] A week after the DoD Working Group on interrogations completed its report and just five days before the Secretary issued his April 16, 2003 guidance for SOUTHCOM, Deputy Commander of U.S. Central Command Lt Gen Michael DeLong sent a memorandum to the Vice Chairman of the Joint Chiefs of Staff, General Peter Pace, requesting assistance in obtaining the Secretary of Defense's approval of interrogation techniques requested by CJTF-180 in their January 24, 2003 memo.¹²¹¹

¹²⁰⁴ Army IG, Interview of CPT Carolyn Wood (August 15, 2006) at 15; Committee staff interview of CPT Carolyn Wood (February 11, 2008).

¹²⁰⁵ Committee staff interview of Lt Col Ted Moss (October 17, 2007).

¹²⁰⁶ CJTF 180 *Interrogation Techniques* (January 24, 2003) at 10.

¹²⁰⁷ Church *Special Focus Team Report*, see also Church Report at 6 for an unclassified accounting of the January 24, 2003 CJTF-180 memorandum for CENTCOM and the Joint Staff.

¹²⁰⁸ Summary of Church Report interview of CENTCOM Deputy Staff Judge Advocate (July 15, 2004).

¹²⁰⁹ Memorandum from Deputy Commander (Forward) U.S. Central Command, *Responses to Request for Information from VADM Church* (August 6, 2004).

¹²¹⁰ Church *Special Focus Team Report* at 11.

¹²¹¹ Memo for the Vice Chairman Joint Chief of Staff (April 11, 2003).

[REDACTED]

[REDACTED] The request came shortly after CAPT Jane Dalton, Legal Counsel for the Chairman of the Joint Chiefs of Staff had informed Barry Hammill, CENTCOM's Deputy Staff Judge Advocate (SJA), that the Secretary of Defense's guidance on interrogation techniques would likely apply only to GTMO.¹²¹² CAPT Dalton had been informed by DoD General Counsel Jim Haynes that he would only concur in providing the techniques to SOUTHCOM, not to CENTCOM.¹²¹³ CAPT Dalton recalled that CENTCOM had requested techniques in their January 24, 2003 memo and told CENTCOM's lawyers that she could ask the Chairman to engage with the Secretary of Defense on their behalf, if they were interested in using the techniques authorized for GTMO.¹²¹⁴

[REDACTED] In his memorandum to Gen Pace, dated April 11, 2003, LTG DeLong said that CENTCOM understood that "OSD may be close to making a decision that would be unfavorable to the use of the requested interrogation techniques at the [Bagram Collection Point]" and was concerned that disapproval of the techniques requested by CJTF-180 would "lead to mission degradation."¹²¹⁵ The memo noted that the Commander of JTF-180, LTG McNeill, had "specifically endorsed" the CJTF-180 request to use aggressive techniques, including individual fears, black out goggles, deprivation of light and sound, sleep adjustment, threat of transfer to another agency or country, and safety positions.¹²¹⁶ Lt Gen DeLong requested the assistance of VCJCS Gen Pace "in ensuring OSD approval" for the requested techniques.¹²¹⁷

XII. Development of Interrogation Policy in Iraq (U)

[REDACTED] On March 20, 2003, a month before Lt Gen DeLong's request, the United States and its coalition partners had launched Operation Iraqi Freedom (OIF). During the initial stages of OIF, conventional ground forces were directed by the Coalition Forces Land Component Command (CFLCC). Combined Joint Task Force 7 (CJTF-7) replaced CFLCC in the summer of 2003. As had been the case in Afghanistan, [REDACTED] deployed a Special Mission Unit (SMU) Task Force (TF) to Iraq to [REDACTED]¹²¹⁸

(U) As previously described, for more than a year after the onset of the war in Afghanistan, the only written guidance for interrogators appears to have been Army Field Manual 34-52 (FM 34-52). When written policies were finally established for interrogators in Afghanistan in January 2003, those policies included some interrogation techniques that were not listed in the Field Manual but had been previously authorized for use at Guantanamo Bay.

¹²¹² Email from CAPT Jane Dalton to William Hammill, CAPT Shelley Young, William Gade (April 2, 2003).

¹²¹³ Memo from CAPT Jane Dalton to VADM Church, *Request for Information* (August 10, 2004) at 5.

¹²¹⁴ Email from CAPT Jane Dalton to William Hammill, CAPT Shelley Young, William Gade (April 2, 2003).

¹²¹⁵ Ibid.

¹²¹⁶ Ibid.

¹²¹⁷ Ibid.

¹²¹⁸ [REDACTED] Memorandum for All [REDACTED] Personnel, *Policy No. 1 - Battlefield Interrogation Team and Facility (BIT/F) Policy* (July 15, 2003) (hereinafter "*BIT/F Policy* (July 15, 2003)").

[REDACTED]

(U) By comparison, the Special Mission Unit (SMU) Task Force (TF) in Iraq had an interrogation policy in place before the beginning of OIF. This policy was identical to the February 2002 policy in use at the SMU Task Force in Afghanistan and reflected the influence of techniques authorized for use at GTMO.¹²¹⁹ The first policy to guide interrogations conducted by conventional forces in Iraq, however, was not established until September 2003, more than five months after that war began. That September 2003 policy was also influenced by techniques authorized for use at GTMO.

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

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

[REDACTED] The SMU TF in Iraq [REDACTED] SMU
[REDACTED] conducted screening and battlefield interrogations
TF interrogators questioned detainees for intelligence
[REDACTED]

(U) According to a review completed by the DoD Inspector General in August 2006, the SMU TF based its first interrogation policy on the SOP used by the SMU TF in Afghanistan. The DoD Inspector General stated:

At the commencement of Operation Iraqi Freedom, the special mission unit forces used a January 2003 Standard Operating Procedure (SOP) which had been developed for operations in Afghanistan. The Afghanistan SOP was influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002. . . and incorporated techniques designed for detainees who were identified as 'unlawful combatants.'¹²²¹

[REDACTED] Specifically, in February 2003, prior to the invasion of Iraq in March, the SMU Task Force designated for operations in Iraq obtained a copy of the interrogation SOP in use by the SMU personnel in Afghanistan, changed the letterhead, and adopted the SOP verbatim.¹²²⁴ This SOP, which included stress positions, sleep deprivation, and the use of dogs, governed

¹²¹⁹ Notwithstanding differences between the legal status of detainees held in Iraq and those in Afghanistan, the SMU TF used the same interrogation approaches in both theaters. In addition, the CJTF-7 interrogation policies included techniques that had been authorized for use at GTMO. By September 2003, interrogation approaches initially authorized for a war in which the President had determined that the protections of the Geneva Conventions did not apply, would be authorized for all U.S. forces in Iraq.

¹²²⁰ Church Special Focus Team Report at 3.

¹²²¹ [REDACTED] BIT/F Policy (July 15, 2003).

¹²²² DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 21; Flag and General Officer Questionnaire for [REDACTED] (June 29, 2004) at 2 (hereinafter [REDACTED] Questionnaire (June 29, 2004)).

¹²²³ DoD IG Report at 16.

¹²²⁴ [REDACTED] Church Special Focus Team Report at 12. [REDACTED]

[REDACTED]

SMU interrogations in Iraq from the start of Operation Iraqi Freedom in March 2003 until it was replaced later that year.¹²²⁵

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

[REDACTED] In May 2003, CAPT Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, sent an email to CENTCOM lawyers stating that CIA General Counsel Scott Muller had called Jim Haynes and told him that the techniques used by military interrogators at the SMU TF facility in Iraq were "more aggressive" than techniques used by CIA to interrogate the same detainees.¹²²⁶

[REDACTED] The email requested that CENTCOM provide a list of interrogation techniques in use at Bagram in Afghanistan and at the SMU Task Force facility in Iraq. On June 8, 2003, the [REDACTED] Legal Advisor provided CENTCOM with a list of interrogation techniques in use by the SMU TF in Iraq and Afghanistan.¹²²⁷ That list included the presence of military working dogs, stress positions (called comfort positions in the memo), sleep management, loud music and light control, and 20 hour interrogations.¹²²⁸ [REDACTED] Legal Advisor did not recall receiving any feedback about the list of interrogation techniques submitted to CENTCOM.¹²²⁹ Despite the presence of aggressive techniques in the JSOC Legal Advisor's June 8 memo, on June 10, 2003 CENTCOM Deputy Commander, LTG Delong, sent a message to the Director of the Joint Staff LTG George Casey stating that "I have confirmed that the military interrogations at both [the SMU TF facility in Iraq] and Bagram are conducted using doctrinally appropriate techniques in accordance with [Army Field Manual] 34-52 and SECDEF direction."¹²³⁰

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

[REDACTED] A July 15, 2003 SMU interrogation SOP appears to have been the first interrogation policy drafted specifically by the SMU TF in Iraq.¹²³¹ The list of interrogation techniques in that SOP included "vary comfort positions" (sitting, standing, kneeling, prone);

¹²²⁵ [REDACTED] Although the Church Special Focus Team Report concluded that the SOP the SMU TF had acquired from its sister unit in Afghanistan before the invasion of Iraq remained in effect for the SMU TF in Iraq until it was replaced on October 25, 2003, the Committee was advised that an unsigned July 15, 2003 SOP was in effect for the SMU TF in Iraq. *Church Special Focus Team Report* at 12. Committee staff interview of SMU Legal Advisor 1 (May 29, 2008).

¹²²⁶ Email from CAPT Jane Dalton to CAPT Shelley Young and Mr. William Hammill (April 2, 2003).

¹²²⁷ [REDACTED] Memo from the [REDACTED] Legal Advisor to Staff Judge Advocate, USCENTCOM, *Joint Task Forces Battlefield Interrogation Techniques* (June 8, 2003); *Church Special Focus Team Report* at 12.

¹²²⁸ [REDACTED] Memo from the [REDACTED] Legal Advisor to Staff Judge Advocate, USCENTCOM, *Joint Task Forces Battlefield Interrogation Techniques* (June 8, 2003).

¹²²⁹ *Ibid.*; *Church Special Focus Team Report* at 12.

¹²³⁰ Message from CENTCOM Deputy Commander (June 10, 2003).

¹²³¹ *BIT/F Policy* (July 15, 2003) at 1.

[REDACTED]

presence of military working dogs; 20-hour interrogations; isolation; and yelling, loud music, and light control.¹²³²

(U) While the SOP described some techniques as having a "foundation" in Army Field Manual 34-52, Lieutenant General Anthony Jones and Major General George Fay, who conducted an investigation into the 205th MI Brigade at Abu Ghraib, described techniques in the July 15, 2003 SMU SOP as "inconsistent with Army doctrine on detainee treatment or interrogation tactics."¹²³³

[REDACTED] The July 15, 2003 policy contained the signature block of the SMU TF Commander [REDACTED] but was unsigned.¹²³⁴ [REDACTED] told the Committee that he did not think he ever approved or even saw an interrogation policy.¹²³⁵ He stated, however, that he was aware that the SMU TF used sleep deprivation, loud music, light control, isolation, "comfort positions," and military working dogs.¹²³⁶ The SMU Task Force Legal Advisor who served at the facility in July and August 2003 stated that he was sure [REDACTED] saw the policy, that he asked him to sign it, and that a copy of the policy sat in the Commander's inbox during the Legal Advisor's deployment to the Task Force.¹²³⁷

[REDACTED] The SMU Task Force's Legal Advisor who arrived at the TF facility in late August 2003 likewise said that his predecessor had tried, without success, to get [REDACTED] to sign the policy.¹²³⁸ That same Legal Advisor stated that he too tried numerous times, also unsuccessfully, to get the Commander to sign the policy. The Legal Advisor added that it got to the point where he would print out a fresh copy of the policy every night and give it to [REDACTED] aide. The Legal Advisor said that he knew the Commander had received copies of the policy from his aide, but that he had a habit of repeatedly "losing" the draft policy.¹²³⁹ He said that the exercise became "laughable" and eventually, he was forced to raise the issue with the [REDACTED] legal advisor.¹²⁴⁰ In the absence of [REDACTED] guidance, the Legal Advisor told the Committee that his direction to SMU personnel was that the unsigned SOP applied to SMU TF interrogations.

[REDACTED] The SMU Counterintelligence and Human Intelligence officer (J2X) who served at the SMU facility told the Committee that a list of authorized interrogations approaches

¹²³² Ibid. at 5.

¹²³³ BIT/F Policy (July 15, 2003) at 5; Review of Department of Defense Detention and Interrogation Operations, Senate Committee on Armed Services, 108th Cong., S. Hrg. 108-868 (May 7, 11, 19; July 22; September 9, 2004) at 1294.

¹²³⁴ BIT/F Policy (July 15, 2003) at 3.

¹²³⁵ Committee staff interview of [REDACTED] (October 11, 2007).

¹²³⁶ Ibid.

¹²³⁷ Committee staff interview of SMU Legal Advisor 1 (May 29, 2008).

¹²³⁸ The SMU TF Legal Advisor added that he would be surprised if the Committee found anything with [REDACTED] signature on it. Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

¹²³⁹ Ibid.

¹²⁴⁰ Ibid.

[REDACTED]

was posted on a wall at the SMU TF facility.¹²⁴¹ He specifically recalled stress positions, loud music, light control, isolation, allowing a minimum amount of time for sleep, and military working dogs as techniques authorized for use in interrogations. He stated that, although military working dogs were not typically present at the SMU TF facility, he recalled making a phone call to arrange for a military working dog to be present for an interrogation.

[REDACTED] While neither the January 10, 2003 nor the July 15, 2003 SMU policies included "removal of clothing," there is evidence that it was used as an interrogation technique at the SMU TF. [REDACTED] who took command at the SMU TF in October 2003, stated that when he arrived on site he "discovered that some of the detainees were not allowed clothes" as an interrogation technique "to gain control over the detainee."¹²⁴² [REDACTED] stated that he did not know where the technique came from and that he was uncomfortable with stripping detainees even though "arguably, it was an effective technique."¹²⁴³ [REDACTED] said he terminated the practice in December 2003 or January 2004.¹²⁴⁴

[REDACTED] However, the SMU TF Legal Advisor who served at the SMU TF facility from December 2003 until February 2004 stated that he attended a meeting called by [REDACTED] in December 2003 or January 2004 to discuss the use of stripping prisoners as part of interrogations.¹²⁴⁵ The Legal Advisor stated that stripping detainees gave him pause but said that the technique was "widespread" at that time.¹²⁴⁶ He said that he advised the Commander that, if stripping were to be authorized, it should be limited to males only and that naked detainees should not be paraded through the Task Force facility. The Legal Advisor stated that two SMU TF behavioral scientists who also attended the meeting advised [REDACTED] not to permit interrogators to strip detainees because of the implications of nudity in Arab culture. The Legal Advisor stated that the Commander nevertheless decided at the meeting that the SMU TF would continue to use nudity as an interrogation technique though the Legal Advisor stated that he thought [REDACTED] may have said that he [REDACTED] would have to approve its use.

[REDACTED] Both LTG Ricardo Sanchez, the Commander of Combined Joint Task Force 7 (CJTF-7), and COL Thomas Pappas, the Commander of the 205th Military Intelligence Brigade (205th MI BDE) in Iraq told the Committee that they were unaware of what interrogation techniques were authorized for use at the SMU TF facility.¹²⁴⁷ Interrogators from the 205th MI BDE, however, served at the SMU TF in support of interrogation operations there. In mid-June 2003, at the request of the SMU TF, CJTF-7 assigned two Arabic-speaking interrogators to the

¹²⁴¹ Committee staff interview of SMU TF J2X (February 5, 2008).

¹²⁴² [REDACTED] Questionnaire (June 29, 2004) at 3.

¹²⁴³ Ibid.

¹²⁴⁴ Ibid.

¹²⁴⁵ Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

¹²⁴⁶ Ibid.

¹²⁴⁷ Committee staff interview of COL Thomas Pappas (October 12, 2007); Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

[REDACTED]

SMU.¹²⁴⁸ COL Pappas recalled sending a second set of approximately two to four interrogators from the 205th MI BDE to the SMU TF around November 2003 to replace the 205th MI BDE personnel already serving at the SMU.¹²⁴⁹

(U) According to LTG Sanchez, CJTF-7 would have retained UCMJ authority over the interrogators and the interrogators would have been required to conduct interrogations under the CJTF-7 authorities rather than those at the SMU TF.¹²⁵⁰ COL Pappas, however, believed that once his interrogators were sent to the SMU TF, they were that they were bound by the rules of the SMU TF and not CJTF-7 interrogation guidance.¹²⁵¹

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

(U) The Iraq Survey Group was established in June 2003. According to its first Commander MG Keith Dayton, the ISG's mission was to find weapons of mass destruction (WMD) or evidence of WMD and to provide support to the CIA special advisor on WMD.¹²⁵² MG Dayton reported directly to the CENTCOM Commander, GEN John Abizaid. As part of its effort to gather intelligence on WMD, the ISG debriefed and interrogated high value detainees, such as former members of Saddam Hussein's regime. Some of those detainees had been captured and interrogated by the SMU TF and other operational units before being handed over to the ISG. From the onset, ISG personnel had concerns about the SMU TF's treatment of detainees.

(U) MG Dayton told the DoD Inspector General that "as our interrogators started getting into the swing of things at Camp Cropper... some of the prisoners were alleging that they had been roughed up" by the SMU TF.¹²⁵³ MG Dayton stated that his Joint Interrogation and Debriefing Center (JIDC) Chief [REDACTED] had described the situation as "a disaster waiting to happen" and believed that ISG needed to "slam some rules on this place right away to basically keep ourselves from getting in trouble and make sure these people are treated properly."¹²⁵⁴

(U) [REDACTED] said that he first became aware of allegations of detainee mistreatment while at the ISG facilities in the first week in June 2003.¹²⁵⁵ At that time, a Chief Warrant Officer

¹²⁴⁸ USCENTCOM to CDR CJTF7, CFC FRAGO 09-278 Arabic Linguist Interrogator Support [REDACTED] DTG 141543Z JUN 03 (June 14, 2003).

¹²⁴⁹ Committee staff interview of COL Thomas Pappas (October 12, 2007). An interrogator with the Iraq Survey Group (ISG) who visited the Task Force facilities regularly recalled that at some point after June 2003 he saw interrogators from the 323rd MI BN (which was also providing interrogators to Abu Ghraib) whom he knew as he had trained some of them in Kuwait prior to the war. Committee staff interview of CWO Brian Searcy (June 4, 2007).

¹²⁵⁰ Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹²⁵¹ Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹²⁵² DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 10, 12, 19, 30, 52.

¹²⁵³ DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 18.

¹²⁵⁴ Ibid. at 19.

¹²⁵⁵ Statement of [REDACTED] (August 9, 2004).

[REDACTED]

told him that a detainee she was interrogating had alleged physical abuse during his capture and subsequent interrogation by SMU TF personnel. [REDACTED] stated that "by mid-June 2003, a pattern of reports of abuse of prisoners (abuse primarily attributed to [the SMU TF] during their capture and interrogation of [high value targets] and other detainees, was coming to me..."¹²⁵⁶

[REDACTED] MG Dayton described what he called a "notorious case" of alleged detainee abuse, in which a badly burned detainee was brought to the ISG facility.¹²⁵⁷ MG Dayton stated that according to the "special forces guys," the detainee had been captured on a very hot day, was thrown down on the metal floor on the Humvee, and during the long drive back from the operation, the detainee had "burned himself lying on the floor of the Humvee."¹²⁵⁸

(U) Throughout the summer and autumn of 2003, ISG personnel continued to be concerned about the treatment of detainees by SMU TF personnel. [REDACTED] stated that, during the last week in June 2003, a British interrogator reported to him that a detainee who had been captured and interrogated by the SMU TF "was beaten so severely, that he had the MPs at Camp Cropper note the [detainee's] condition."¹²⁵⁹ [REDACTED] said he was told that the detainee's "back was almost broken, his nose was probably broken, and he had two black eyes, plus multiple contusions on his face."¹²⁶⁰

[REDACTED] According to the SMU TF Legal Advisor who served at the facility in July and August 2003, during one of the nightly briefings held at the SMU TF Joint Operations Center, [REDACTED] the SMU TF Commander, said "continue to work him over" and "work him hard" in reference to a particular detainee being interrogated at the SMU TF.¹²⁶¹ The Legal Advisor said that about 50 people were present when [REDACTED] made that statement, that he (the Legal Advisor) was concerned about the message it conveyed, and that he subsequently spoke to the Commander about it. The Legal Advisor said that [REDACTED] made a similar statement on a video teleconference.

[REDACTED] MG Dayton recalled that [REDACTED] sought to address reports of SMU TF detainee mistreatment with him. According to MG Dayton, [REDACTED] heard that "rumors" of detainee mistreatment were circulating and "he wanted to set [MG Dayton's] mind at rest."¹²⁶² MG Dayton recalled that he spoke to [REDACTED] a few times and that [REDACTED] told him "You're going to hear rumors, but it's all - it's all untrue."¹²⁶³

(U) In addition to allegations of mistreatment by the SMU TF, [REDACTED] the JIDC Chief said that he was informed in early June that the ICRC had visited a facility run by the 323

¹²⁵⁶ Ibid. at 9.

¹²⁵⁷ DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 20.

¹²⁵⁸ Ibid. at 21.

¹²⁵⁹ Statement of [REDACTED] (August 9, 2004) at 9.

¹²⁶⁰ Ibid.

¹²⁶¹ Committee staff interview of SMU TF Legal Advisor 1 (May 29, 2008).

¹²⁶² DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 50.

¹²⁶³ Ibid. at 29.

[REDACTED]

MI Battalion where high value detainees were undergoing interrogations.¹²⁶⁴ [REDACTED] said that the ICRC had subsequently prepared an inspection report [REDACTED] (He said that he understood the abuse had allegedly taken place while the detainees were under the control of the 115th MP Battalion.) [REDACTED] said he was told [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

(U) In May 2003, Combined Joint Task Force 7 (CJTF-7) began preparations to take over from CFLCC as the operational headquarters for all conventional ground units in the Iraqi theater. The CJTF-7 Commander, LTG Sanchez, stated that during summer 2003, the general belief was that the number of forces in Iraq had to shrink as quickly as possible and that, accordingly, CENTCOM and CFLCC reduced troop levels "very, very rapidly."¹²⁶⁵ LTG Sanchez said that the drawdown left insufficient personnel behind for CJTF-7 to fulfill its mission as well as inadequate command structures, planning capacities, and intelligence capabilities. He said that during the handover "there were no intelligence structures that were transferred to [CJTF-7] from CFLCC" and, as a result, the remaining intelligence structure did not enable CJTF-7 to address the requirements of a Combined Joint Task Force operating at a "strategic, operational, and tactical level."¹²⁶⁷

(U) LTG Sanchez stated that by July 2003, it was evident "that CJTF-7 was engaged in a counterinsurgency operation that would be difficult if not impossible to win without significant

¹²⁶⁴ Email from [REDACTED] to ISG Personnel (June 17, 2003).

¹²⁶⁵ Email from [REDACTED] to ISG Personnel (June 17, 2003).

¹²⁶⁶ Army IG, Interview of LTG Ricardo Sanchez (October 26, 2004) at 2-3.

¹²⁶⁷ Ibid. at 10.

[REDACTED]

improvements in the intelligence capabilities of [CJTF-7].¹²⁶⁸ LTG Sanchez said that he was particularly concerned about his HUMINT capabilities, including the level of interrogation expertise within CJTF-7, and that he "seriously questioned the training and experience of our interrogators."¹²⁶⁹

(U) LTG Sanchez said he posed a challenge to his staff: "How do we ensure that we have the right mechanisms in place that allow our interrogators to push the limit of our authorities yet prevent a violation of the Geneva Convention and our duty to treat detainees humanely?"¹²⁷⁰ He said that "references to the [Field Manuals] and doctrine were common responses but the issues being faced were beyond the scope of the Army's limited doctrine."¹²⁷¹ LTG Sanchez added that there was frustration about the ability to get a handle on the insurgency and that he put a tremendous amount of pressure on his intelligence officers.¹²⁷²

(U) The Commander of the 205th Military Intelligence Brigade, COL Pappas, said that soon after arriving in theater in July 2003, CJTF-7's Chief of Staff BG Daniel Hahn directed him to attend a meeting to brief LTG Sanchez on interrogation operations.¹²⁷³ COL Pappas told the Committee that he learned at that meeting that LTG Sanchez was concerned that interrogations had not generated the expected intelligence information.¹²⁷⁴ COL Pappas said that LTG Sanchez "believed that if the brigade improved its interrogation tactics, techniques, and procedures, that we would get the information necessary to stop the insurgency."¹²⁷⁵ COL Pappas agreed and told LTG Sanchez that his interrogators would need the authority to use additional interrogation techniques to accomplish that goal.¹²⁷⁶

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

(U) In mid-Summer 2003, the 205th MI BDE began preparing for Operation Victory Bounty, an undertaking designed to track down remaining elements of the Fedayeen Saddam, a paramilitary organization loyal to Saddam Hussein.¹²⁷⁷ In late July 2003, ten to twelve members of the 519th MI Battalion went to Abu Ghraib to establish interrogation operations in anticipation of receiving individuals captured during Victory Bounty.¹²⁷⁸ On August 4, 2003, CPT Carolyn Wood, the 519th MI Battalion Assistant Operations Officer, assumed duties as the Interrogation

¹²⁶⁸ Ibid. at 5.

¹²⁶⁹ Ibid. at 6.

¹²⁷⁰ Ibid. at 7.

¹²⁷¹ Ibid.

¹²⁷² Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹²⁷³ The CJTF-7 Commander, his senior staff, and division Commanders attended the meeting. Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹²⁷⁴ Ibid.

¹²⁷⁵ Army IG, Interview of COL Thomas Pappas (August 24, 2006) at 6.

¹²⁷⁶ Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹²⁷⁷ DoD News Briefing (August 7, 2003).

¹²⁷⁸ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4.

[REDACTED]

Officer in Charge (OIC) at the facility.¹²⁷⁹ In late 2002, she had served as the Interrogation Operations Officer at the Bagram detention facility in Afghanistan.

(U) According to CPT Wood, no SOP was in place for interrogations when she took command, but interrogations were conducted "within the approved approaches within the Field Manual 34-52 only, with the possible addition of stress positions."¹²⁸⁰ CPT Wood stated that interrogators had used sleep deprivation and stress positions in Afghanistan and that she "perceived the Iraq experience to be evolving into the same operational environment as Afghanistan."¹²⁸¹ She said that she used her "best judgment and concluded [the techniques] would be effective tools for interrogations at [Abu Ghraib]."¹²⁸² She also said that she later put together a request for additional interrogation options because "the winds of war were changing" and there was "mounting pressure from higher for 'actionable intelligence' from interrogation operations."¹²⁸³ CPT Wood said that she did not want to repeat her experience in Afghanistan, where interrogators lacked written guidance.¹²⁸⁴

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

(U) CPT Wood said that guidance for interrogators about the rules for interrogations was important because the interrogators in the 519th Battalion had come to Abu Ghraib with a range of different experiences:

A lot of the interrogators and analysts also served in Guantanamo Bay and Afghanistan where some other techniques were approved for use... I understood the Afghanistan rules were a little different because the detainees were not classified as EPWs. It was, "use techniques in the spirit of the Geneva convention," not, "you will apply the Geneva Convention." In order to use those similar techniques from GTMO and Afghanistan in Iraq, we sought approval from the higher command.¹²⁸⁵

(U) COL Pappas, CPT Wood's superior officer, said he knew that CPT Wood believed she needed additional techniques and told her to submit a request.¹²⁸⁶

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

¹²⁷⁹ Ibid. at 3.

¹²⁸⁰ Sworn Statement of CPT Carolyn Wood (December 17, 2004); Committee staff interview of CPT Carolyn Wood (February 11, 2008).

¹²⁸¹ Sworn Statement of CPT Carolyn Wood (May 21, 2004).

¹²⁸² Ibid.

¹²⁸³ Ibid.

¹²⁸⁴ Committee staff interview of CPT Carolyn Wood (February 11, 2008).

¹²⁸⁵ Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 3. Additionally, CJTF-7 Commander LTG Sanchez said a key purpose of his eventually issuing an interrogation policy was to regulate approach techniques believed derived, in part, from techniques used in Guantanamo Bay and Afghanistan. Statement by LTG Ricardo Sanchez to the Department of the Army Inspector General (October 2004) at 7.

¹²⁸⁶ Committee staff interview of COL Thomas Pappas (October 12, 2007).

[REDACTED]

(U) On July 26, 2003, CPT Wood submitted a proposed interrogation policy to her chain of command. The proposed policy was based on the interrogation policy in use at the SMU TF facility in Iraq.¹²⁸⁷ CPT Wood said that she and her staff simply "cleaned up some of the grammar, changed the heading and signature block, and sent it up" to CJTF-7 as a proposed policy for the 519th MI BDE.¹²⁸⁸

[REDACTED] Mirroring the SMU TF policies, CPT Wood's proposed policy included sleep management, "vary comfort positions" (sitting, standing, kneeling, prone), presence of military working dogs, 20-hour interrogations, isolation, and yelling, loud music, and light control.¹²⁸⁹ The proposed policy stated that "EPWs that refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."¹²⁹⁰ The prohibition against threats, insults and exposure to unpleasant or disadvantageous treatment, however, was limited to EPWs and CPT Wood stated that, to her knowledge, there were no EPWs held at Abu Ghraib.¹²⁹¹

(U) CPT Wood stated that submitting the proposed interrogation policy seemed a "natural progression" to her as she understood the techniques were already approved for use at the SMU TF in Iraq, and the policy was "similar to that of a document that was drafted in Afghanistan for the [Bagram Collection Point] as well as . . . GTMO."¹²⁹² CPT Wood did not hear back from CJTF-7 at that time.¹²⁹³ Just a few weeks later CJTF-7 itself solicited a "wish list" of interrogation techniques.

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

(U) On August 14, 2003, CPT William Ponce, the Battle Captain in the CJTF-7 HUMINT and Counterintelligence office (CJ2X), sent out an email to subordinate intelligence elements (including the 205th MI BDE and the 519th MI BN) requesting that they submit their "interrogation techniques wish list[s]."¹²⁹⁴ CPT Ponce wrote:

Immediately seek input from interrogation elements (Division / Corps) concerning what their special interrogation knowledge base is and more

¹²⁸⁷ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 10. The Interrogation OIC had received the policy from one of her Chief Warrant Officers who had, in turn, received the policy from the LTC Robert Whelan, Commander of the 519th MI BN.

¹²⁸⁸ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4; Committee staff interview of CPT Carolyn Wood (February 11, 2008). CPT Wood explained that even though the memorandum was dated July 26, 2003, which was before she took over the position at Abu Ghraib, she thought that one of her Chief Warrant Officers might have sent it up the chain knowing that she would be on board shortly.

¹²⁸⁹ Memo from CPT Carolyn Wood to C2X, CJTF-7 (IRAQ) ABU GHURAYB, *Saddam Fedayeen Interrogation Facility (SFIF) Detainee Interrogation Policy* (July 26, 2003) (hereinafter "*SFIF Interrogation Policy* (July 26, 2003)"); see also *BIT/F Policy* (July 15, 2003) at 3.

¹²⁹⁰ *SFIF Interrogation Policy* (July 26, 2003) at 2.

¹²⁹¹ Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 4.

¹²⁹² Army IG, Interview of CPT Carolyn Wood (August 15, 2006).

¹²⁹³ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 10.

¹²⁹⁴ Email from CPT (F) William Ponce Jr. to CS165MI, HECC (August 14, 2003).

[REDACTED]

importantly, what techniques would they feel would be effective techniques that SJA could review (basically provide a list).¹²⁹⁵

CPT Ponce added:

...The gloves are coming off gentleman regarding these detainees. Col. Boltz has made it clear that we want these individuals broken. Casualties are mounting and we need to start gathering info to help protect our fellow soldiers from any further attacks.¹²⁹⁶

(U) The Commander of the 205th MI BDE, COL Pappas, said he thought that CPT Ponce's email soliciting "interrogation techniques wish lists" was the result of the meeting he attended with LTG Sanchez shortly after arriving in theater.¹²⁹⁷ He called the Battle Captain's use of the phrase "the gloves are coming off" a "dumb" thing to say and a "poor choice of words."¹²⁹⁸ LTG Sanchez told the Committee that he expected his intelligence staff to send out the request for interrogation techniques, but stated that the use of the phrase "the gloves are coming off" was "not good."¹²⁹⁹ LTG Sanchez believed that the email reflected frustration on the part of intelligence personnel at not being able to meet his intelligence requirements.

(U) Chief Warrant Officer (CWO) Lewis Welshofer, who was with the 3rd Armored Cavalry Regiment responded to CPT Ponce's email with his own assessment of the interrogation situation:

Today's enemy, particularly those in [Southwest Asia], understand force, not psychological mind games or incentives. I would propose a baseline interrogation technique that at a minimum allows for physical contact resembling that used by SERE schools (This allows open handed facial slaps from a distance of no more than about two feet and back handed blows to the midsection from a distance of about 18 inches. Again, this is open handed.) . . . Other techniques would include close confinement quarters, sleep deprivation, white noise, and a litany of harsher fear-up approaches. . . fear of dogs and snakes appear to work nicely. I firmly agree that the gloves need to come off.¹³⁰⁰

(U) Maj. Nathan Hoepner, the Operations Officer (S-3) of the 501st MI Battalion took issue with the language in CPT Ponce email, stating in an email of his own:

¹²⁹⁵ Ibid.

¹²⁹⁶ Ibid.

¹²⁹⁷ Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹²⁹⁸ Ibid.; Sworn Statement of COL Thomas Pappas (January 25, 2006) at 15.

¹²⁹⁹ Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹³⁰⁰ Email from CPT (P) William Ponce Jr. to CS165MI, HECC (August 14, 2003). CWO Lewis Welshofer was later tried and convicted of negligent homicide and negligent dereliction of duty in connection with the November 26, 2003 killing of an Iraq detainee.

[REDACTED]

As for "the gloves need to come off..." we need to take a deep breath and remember who we are. Those gloves are most definitely NOT based on Cold War or WWII enemies—they are based on clearly established standards of international law to which we are signatories and in part the originators. Those in turn derive from practices commonly accepted as morally correct, the so-called "usages of war." It comes down to standards of right and wrong—something we cannot just put aside when we find it inconvenient, any more than we can declare that we will "take no prisoners" and therefore shoot those who surrender to us simply because we find prisoners inconvenient.

"The casualties are mounting..." we have taken casualties in every war we have ever fought—that is part of the very nature of war. We also inflict casualties, generally more than we take. That in no way justifies letting go of our standards. We have NEVER considered our enemies justified in doing such things to us. Casualties are part of war—if you cannot take casualties then you cannot engage in war. Period. BOTTOM LINE: We are American soldiers, heirs of a long tradition of staying on the high ground. We need to stay there.¹³⁰¹

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

(U) On August 27, 2003, CPT Wood re-submitted the proposed interrogation policy that she had previously sent in July. She said she thought the issue came up because CJTF-7 headquarters "want[ed] these guys broken" and said her August submission may have been a response to CPT Ponce's email.¹³⁰²

[REDACTED] Though largely the same as the proposed policy submitted on July 26, 2003, the August 27, 2003 proposed policy included one additional interrogation technique – "sensory deprivation," which the proposed policy described as a "combination use of isolation and sleep management" [REDACTED]¹³⁰³ The proposed interrogation policy also inserted the term "stress positions" in place of "vary comfort positions" and limited use of sleep deprivation to 72 hours.¹³⁰⁴

(U) CPT Wood said that two days after she submitted the proposed policy, two lawyers from CJTF-7 visited Abu Ghraib with a copy of her memo.¹³⁰⁵ According to CPT Wood, the

¹³⁰¹ Email from 4ID 104 MI ICE to various recipients (August 14, 2003) (emphasis in original).

¹³⁰² Sworn Statement of CPT Carolyn Wood (December 17, 2004) at 2.

¹³⁰³ Memo from CPT Carolyn Wood to C2X, CJTF-7 (IRAQ), ABU GHURAYB, *Saddam Fedayeen Interrogation Facility (SFIF) Detainee Interrogation Policy* (August 27, 2003) at 4.

¹³⁰⁴ Ibid.

¹³⁰⁵ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 4; Committee staff interview of CPT Carolyn Wood (February 11, 2007).

[REDACTED]

two attorneys said that "they did not see anything wrong with it and that they would add their approval and forward it higher to CJTF-7 for consideration and review."¹³⁰⁶

(U) Techniques in CPT Wood's proposed policy can be traced back though the SMU TF in Iraq to Afghanistan and, ultimately, to techniques authorized for use at GTMO by Secretary Rumsfeld in December 2002. The GTMO techniques were, in turn, influenced by techniques used by the Joint Personnel Recovery Agency and the military service SERE schools to train U.S. personnel to resist illegal enemy interrogations. In the summer of 2003, as CPT Wood was seeking approval for her proposed policy, the SMU TF in Iraq was soliciting JPRA's advice on interrogations.

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

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

[REDACTED] In the summer of 2003, the Commander of the Special Mission Unit (SMU) Task Force (TF) in Iraq, [REDACTED] called the Commander of JPRA, Col Randy Moulton, to request assistance with Task Force interrogations.¹³⁰⁷

[REDACTED] On August 25, 2003, the SMU Task Force in Iraq formally requested a JPRA "interrogation team."¹³⁰⁸ The request asked that JPRA send two or more individuals to the TF for three weeks to "provide assistance to current interrogation efforts of key [high value targets]."¹³⁰⁹ On August 27, 2003, [REDACTED] request for support, forwarded it to JFCOM, and asked that JFCOM task JPRA to support the request.¹³¹⁰ That same day, the JFCOM Operations Directorate (J-3) authorized JPRA to provide the requested support to the SMU TF.

[REDACTED] Christopher Wirts, the Chief of JPRA's Operations Support Office (OSO) subsequently selected three JPRA personnel for the mission. As Team Chief, Mr. Wirts chose Lt Col Steven Kleinman, a reserve officer who happened to be a trained interrogator. Mr. Wirts also chose Terrence Russell, JPRA's manager for research and development who was also a SERE specialist. Though Mr. Russell had no formal interrogation training or experience, he had previously conducted interrogation-related training for [REDACTED] JTF-GTMO personnel. To

¹³⁰⁶ Ibid.

¹³⁰⁷ Memo from Lt Col Arlene McCue for the Force Judge Advocate, *Results of Telephonic Interview With Colonel Randy Moulton, (USA Ret), former Commanding Officer, JPRA (September 23, 2005) at 1 (hereinafter "McCue, Results of Interview with Colonel Moulton")*; Committee staff interview of [REDACTED] (October 10, 2007). [REDACTED] The Chief of the Operational Support Office (OSO) at JPRA told the Committee that in the process of providing defensive SERE training to Special Mission Units, JPRA personnel who had conducted offensive training [REDACTED] also consulted with the Special Mission Units to determine how they could be helpful in training. Committee staff interview of Chris Wirts (January 4, 2007).

¹³⁰⁸ [REDACTED] Priority Message, *Request JPRA Assistance in Interrogation Support*, Date Time Group (DTG) 252059Z AUG 03 (August 25, 2003).

¹³⁰⁹ Ibid.

¹³¹⁰ [REDACTED] to HQ JPRA, *Interrogator Support*, DTG 272054Z AUG 03 (August 27, 2003); HQ [REDACTED] to CDR USJFCOM, *Request for Interrogator Support*, DTG 271004Z AUG 03 (August 27, 2003).

[REDACTED]

complete the team, Mr. Wirts chose Lenny Miller, a contract SERE instructor who also lacked interrogation experience but who the SMU TF had specifically requested. The team's deployment date was set for September 1, 2003.¹³¹¹

(U) Lt Col Kleinman said that, before being deployed, he thought he was being sent to Iraq to identify problems in the TF interrogation program.¹³¹² More than a year earlier, Lt Col Kleinman had drafted a paper identifying challenges faced by interrogators at GTMO.¹³¹³ In the draft paper, Lt Col Kleinman identified "fundamental systemic problems" at GTMO that undermined operational effectiveness.¹³¹⁴

[REDACTED] Chief among the problems identified in the draft paper was the lack of trained personnel with experience in strategic interrogations.¹³¹⁵ Lt Col Kleinman recommended a number of options in his draft paper to enhance DoD's ability to conduct strategic interrogation, including additional training.¹³¹⁶ He recommended having experienced "survival, intelligence, and human factors specialists" conduct an "in-depth assessment" of operations at GTMO and provide a "comprehensive report that would set forth concrete steps to improve operational effectiveness and security."¹³¹⁷ Lt Col Kleinman's paper did not recommend teaching interrogators at GTMO how to use SERE techniques in interrogations and he said that he did not believe that was the purpose of the Iraq trip.¹³¹⁸

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

[REDACTED] JPRA received written approval from JFCOM to support the SMU TF request.¹³¹⁹ JPRA Commander Col Randy Moulton told the Committee that he was pretty sure he also conducted a briefing for the JFCOM Director for Operations (J-3) about JPRA's support to interrogation efforts at the SMU TF, although he could not recall when that briefing occurred.¹³²⁰ The JFCOM J-3, BG Thomas Moore, who was involved in coordinating at least one of JPRA's

¹³¹¹ Details of the three-week JPRA trip to Iraq are reflected in trip reports that Lt Col Kleinman and Mr. Russell submitted "upon their return from Iraq in late September 2003." Lt Col Kleinman's trip report is annotated with the comments of Mr. Russell. See DoD IG Memorandum for the Record, 4 January 2005 Meeting with Mr. Lt Col Steve Kleinman (January 11, 2005) at 4; Memorandum from Mr. Terry Russell for Lt. Col. Reichert, Mr. Wirts, JPRA Support to [REDACTED] (undated) (hereinafter "Russell Trip Report"); Memorandum from Lt Col Steven Kleinman, Trip Report -- TDY to CENTCOM AOR, 1-24 Sep 03 (undated) (hereinafter "Kleinman Trip Report").

¹³¹² Jane Mayer, *The Dark Side* (New York: Doubleday) at 246.

¹³¹³ Maj Steven Kleinman, *Support to DoD Interrogation Operations* (May 17, 2002).

¹³¹⁴ *Ibid.*

¹³¹⁵ *Ibid.* at 1-2.

¹³¹⁶ *Ibid.* at 4-6.

¹³¹⁷ *Ibid.* at 5.

¹³¹⁸ Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

¹³¹⁹ (S/FP) CDR USJFCOM to HQ JPRA, *Interrogator Support*, DTG 272054Z AUG 03 (August 27, 2003).

¹³²⁰ Committee staff interview of Col Randy Moulton (November 26, 2007).

[REDACTED]

previous "offensive" training sessions completed his assignment as the J-3 at JFCOM in early to mid-August and was replaced by RADM John Bird.¹³²¹

(U) On September 4, 2003, just as the JPRA team was arriving in Iraq, Col Moulton emailed a JPRA "Weekly Report" to the JFCOM Command Group and others stating:

We deployed a Personnel Recovery Support Team to Baghdad in support of CENTCOM and [redacted] interrogation requirements. This is an issue that may merit Lessons Learned visibility, as there is currently no focal point within DoD for strategic debriefing / interrogation [tactics, techniques, and procedures] development (offensive). Currently, subject matter expertise on captivity environments, psychology, and maintenance resides almost solely within JPRA (defensive).¹³²²

(U) In response, the JFCOM Deputy Commander LTG Robert Wagner, questioned whether JPRA was operating within its charter. He wrote: "I'm not sure I see the connection between your assigned responsibilities and this task . . . [W]hat charter places JPRA in the business of intelligence collection?"¹³²³ Col Moulton responded "There is nothing in our charter or elsewhere that points us towards the offensive side of captivity conduct nor are we requesting to take this on as a new responsibility."¹³²⁴ He added, however, that JPRA had a role to play in helping to educate and assist offensive operations, stating;

[Those conducting interrogations] have already demonstrated the need for our understanding and knowledge of captivity environment and psychology. We are also well aware of the problems associated with crossing the Rubicon into intel collection (or anything close). There may be a compromise position (my gut choice) whereby we could provide/assist in oversight, training, analysis, research, and [tactics, techniques, and procedures] development, while leaving the actual debriefing/interrogation to those already assigned the responsibility.¹³²⁵

(U) In a subsequent email to RADM Bird, Col Moulton stated that while he was concerned about "mission creep" and departing too far from JPRA's traditional role, it was his view that "no DoD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation."¹³²⁶ Col Moulton wrote:

¹³²¹ Committee staff interview of RADM John Bird (March 17, 2008)

¹³²² Email from JPRA J2 to weekly report distribution list, *JPRA Weekly Report* (September 4, 2003). The JPRA Commander also updated JFCOM in JPRA's subsequent weekly reports. See September 11, 2003 Weekly Report (the JPRA team "deployed to Baghdad continues to support [redacted] with strategic debriefing.") September 25, 2003 Weekly Report (the JPRA team "deployed to Baghdad to support [redacted] with strategic debriefing" returned on September 24, 2003.)

¹³²³ Email from LTG Wagner to Col Moulton (September 6, 2003).

¹³²⁴ Email from Col Moulton to LTG Wagner (September 8, 2003).

¹³²⁵ Ibid.

¹³²⁶ Email from Col Moulton to RADM Bird (September 9, 2003).

[REDACTED]

Our subject matter experts (and certain Service SERE psychologist[s]) currently have the most knowledge and depth within DoD on the captivity environment and exploitation. I think that JPRA/JFCOM needs to keep involved for reasons of TTP development and information sharing. We are NOT looking to expand our involvement to active participation. The current support was intended to be limited to advice, assistance, and observation. Our potential participation is predicated solely on the request of the Combatant Commander.¹³²⁷

(U) Col Moulton testified to the Committee that before he sent the JPRA team to Iraq he talked to the SMU Task Force commander and was told that SMU TF detainees "were detained unlawful combatants and not covered under the Geneva Conventions."¹³²⁸ Col Moulton later said, referring to a subsequent call with the SMU TF Commander, that he did not know if the SMU TF Commander had "specifically" told him that.¹³²⁹

3. *JPRA Provides Interrogation Support to the Special Mission Unit Task Force in Iraq (U)*¹³³⁰

[REDACTED] On September 5, 2003, after their arrival in Iraq, the three-member JPRA team met with SMU TF personnel at the TF facility.¹³³¹ According to Lt Col Kleinman, the JPRA Team Chief, the team was told that interrogators were having trouble gaining actionable intelligence information from detainees in TF custody.¹³³² Lt Col Kleinman felt that the SMU TF's lack of success was a result of a poor screening process, which resulted in the TF holding some detainees with no information.¹³³³

[REDACTED] According to Terrence Russell, the team also met that day with the SMU TF Commander [REDACTED] and discussed [REDACTED] expectations for the JPRA team.¹³³⁴ Mr. Russell said that [REDACTED] "expected [the JPRA team] to become fully engaged in interrogation operations" and "encouraged [the team] to receive modified" rules of engagement (ROEs) from JPRA, since their ROEs at that time permitted the team to "advise and assist" but not to "engage in direct interrogations."¹³³⁵

¹³²⁷ Ibid. (emphasis in original).

¹³²⁸ SASC Hearing (September 25, 2008).

¹³²⁹ Ibid.

¹³³⁰ To the extent possible, the Committee relied on contemporaneous documents, including Lt Col Kleinman's and Mr. Russell's written trip reports, to establish the timeline of events during the JPRA team's visit to the SMU Task Force.

¹³³¹ Russell Trip Report.

¹³³² Committee staff interview of Lt Col Steven Kleinman (February 14, 2007).

¹³³³ Ibid. During his interview with Committee staff, Lt Col Kleinman described the interrogation of an Iraqi man who had been detained by U.S. forces because interrogators believed he had useful intelligence because he knew about "bridges." Lt Col Kleinman said that it later became clear that the man was a dental technician.

¹³³⁴ Russell Trip Report at 2.

¹³³⁵ Ibid. at 1.

[REDACTED]

[REDACTED] Over the next week, Lt Col Kleinman spoke by phone with Col Moulton at least twice. While accounts by the three JPRA team members of those calls differed in some respects, all agree that the calls resulted in Col Moulton (1) authorizing the team to participate in SMU Task Force interrogations and (2) authorizing the team to use the full range of SERE school physical pressures in those interrogations. Col Moulton confirmed that the team's understanding of his guidance was correct.¹³³⁶

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

[REDACTED] According to Mr. Russell, Lt Col Kleinman called Col Moulton on September 5, 2003 to discuss the team's ROEs and, the following day, Col Moulton gave the team permission to "become fully engaged in all BIF operations."¹³³⁷ That account is consistent with Col Moulton's recollection, which was that Lt Col Kleinman called him after arriving in Iraq to discuss a request from the SMU TF that team members actually participate in interrogations.¹³³⁸

[REDACTED] Col Moulton said that, after getting the call from Lt Col Kleinman, he called [REDACTED] "to confirm and inquire about the new request."¹³³⁹ In subsequent interviews and communications, Col Moulton has consistently stated that he relayed [REDACTED] request to JFCOM and got JFCOM's authorization to permit the JPRA team to participate in interrogations. Col Moulton's recollection of who at JFCOM provided that authority, however, has varied.

(U) According to a memorandum of a September 2005 interview with the JPRA Commander, Col Moulton "relayed the request to the [JFCOM] J3 and got the verbal OK to allow active participation, but only for one or two demonstrations and then the team was to go back to its role as observers."¹³⁴⁰

(U) In a 2006 email to the DoD IG, however, Col Moulton could not recall exactly whom at JFCOM he had spoken with, stating:

During the deployment I received a call from the Task Force commander requesting that our personnel participate in the debriefing. I notified JFCOM leadership of the request (either BG Moore or LTG Wagner I can't remember, but think it was [LTG] Wagner since this was late on a weekend night) and was told that they could support, but that any activities had to be approved through the task forces legal rep (we were chopped to them).¹³⁴¹

¹³³⁶ SASC Hearing (September 25, 2008).

¹³³⁷ Russell trip report at 2.

¹³³⁸ Committee staff interview of Randy Moulton (June 19, 2007); Committee staff interview of Randy Moulton (November 26, 2007)

¹³³⁹ McCue, *Results of Interview with Colonel Moulton* at 1.

¹³⁴⁰ McCue, *Results of Interview with Colonel Moulton* at 1. According to the DoD IG report, the JPRA Commander confirmed that the U.S. Joint Forces Command J-3 and the SMU TF Commander "gave a verbal approval for the SERE team to actively participate in 'one or two demonstration' interrogations." DoD IG Report at 28.

¹³⁴¹ Email from Randy Moulton to DoD IG (June 30, 2006) at 3.

[REDACTED] In interviews with Committee staff in 2007, Col Moulton said that he had tried but had been unable to reach BGen Moore, so instead he called LTG Wagner whom he reached at home.¹³⁴² According to that account, LTG Wagner told Col Moulton that he needed approval from his boss, JFCOM Commander ADM Giambastiani, to approve the JPRA request.¹³⁴³ According to Col Moulton, LTG Wagner called him back and gave his approval.¹³⁴⁴

[REDACTED] BGen Moore, whom Col Moulton referenced in his September 2005 interview, was no longer assigned to JFCOM in September 2003.¹³⁴⁵ RADM Bird, who replaced BGen Moore, stated that he did not recall receiving a call from the JPRA Commander. RADM Bird said that he thought it unlikely he would have received the call on the weekend as it would have had to have occurred over a secure line and he did not have that capability at home. LTG Wagner told the Committee that he could not recall if he received a call from Col Moulton.¹³⁴⁶

[REDACTED] According to Terrence Russell, one of the JPRA team in Iraq, the JPRA team received permission from Col Moulton "to become fully engaged in all BIF operations."¹³⁴⁷ The next day, team members met with the SMU TF staff and "outlined the exploitation cycle and how [the staff] could incorporate [SERE Training, Tactics, and Procedures] to support their current interrogation operations."¹³⁴⁸

[REDACTED] While it is not known when it occurred, the Chief of Human Intelligence and Counterintelligence (J-2X) for the SMU stated that members of the JPRA team demonstrated interrogation techniques, including the "attention slap," which he said was described as an open-handed slap to focus the detainee on the interrogation, and walling, which was described as a push up against the wall.¹³⁴⁹ The J-2X could not recall if all members of the JPRA team were present during that lesson.¹³⁵⁰ Lt Col Kleinman said that he was not aware of such a lesson.¹³⁵¹

¹³⁴² Committee staff interview of Col Randy Moulton (June 19, 2007); Committee staff interview of Col Randy Moulton (November 26, 2007). LTG Wagner, however, to which the JPRA Commander referred had already left JFCOM in August 2003, well before the JPRA team deployed to Iraq. In testimony to the Senate Armed Services Committee, Col Moulton said that he was unable to reach RADM Bird or Maj Gen Soligan so he "went up the chain and spoke with General Wagner." SASC hearing (September 25, 2008).

¹³⁴³ Committee staff interview of Col Randy Moulton (June 19, 2007).

¹³⁴⁴ Ibid.

¹³⁴⁵ Committee staff interview of RADM John Bird (March 17, 2008).

¹³⁴⁶ Committee staff interview of Robert Wagner (June 28, 2007).

¹³⁴⁷ Russell Trip Report.

¹³⁴⁸ Russell Trip Report.

¹³⁴⁹ With the walling technique, the J-2X stated that instructions were given to use a wood wall and to pick a spot on the wall in between any metal braces. Committee staff interview of SMU TF J2X (February 5, 2008).

¹³⁵⁰ Committee staff interview of SMU TF J2X (February 5, 2008).

¹³⁵¹ Committee staff interview of Steven Kleinman (March 14, 2008).

[REDACTED]

[REDACTED] The J-2X stated that he was unsure if techniques taught to the staff were permitted under SMU TF policy and that, after the JPRA demonstration, he raised this matter with the SMU TF J2, which at the time was [REDACTED]¹³⁵²

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

[REDACTED] On September 6, 2003, JPRA team members were present in the interrogation booth when a SMU TF interrogator used "selected physical pressures" on a detainee.¹³⁵³ According to Terrence Russell, the SMU TF interrogator "put the detainee on his knees and later began to use insult slaps every 3-4 seconds for an extended period of time."¹³⁵⁴

(U) Lt Col (now Colonel) Kleinman described that same interrogation in testimony before the Senate Armed Services Committee. Lt Col Kleinman said:

I walked into the interrogation room, all painted in black with [a] spotlight on the detainee. Behind the detainee was a military guard... with a[n] iron bar... slapping it in his hand. The interrogator was sitting in a chair. The interpreter was - was to his left... and the detainee was on his knees... A question was asked by the interrogator, interpreted, the response came back and, upon interpretation, the detainee would be slapped across the face... And that continued with every question and every response. I asked my colleagues how long this had been going on, specifically the slapping, they said approximately 30 minutes.¹³⁵⁵

(U) Lt Col Kleinman said that his two JPRA colleagues, who were present during the interrogation, "didn't seem to think there [was] a problem, because in SERE training... there's a facial slap, but it's conducted in very specific ways... This was not conducted in that fashion."¹³⁵⁶ In fact, Lt Col Kleinman described the environment at the Task Force facility as "uncontrolled."¹³⁵⁷

[REDACTED] Members of the JPRA team had differing views on the appropriate response to the interrogator's use of those techniques. Mr. Russell stated that he and Mr. Miller "saw nothing wrong with" the interrogator forcing the detainee to kneel or his slapping the detainee during the interrogation.¹³⁵⁸ Lt Col Kleinman had a different reaction.

[REDACTED] Lt Col Kleinman considered forcing the detainee to kneel and repeatedly slapping him to be "direct violations of the Geneva Conventions and [actions that] could constitute a war crime."¹³⁵⁹ Upon witnessing the abusive conduct, Lt Col Kleinman sought out the SMU TF J-

¹³⁵² Committee staff interview of SMU TF J2X (February 5, 2008).

¹³⁵³ Testimony of Terrence Russell (August 3, 2007) at 102-103, 106.

¹³⁵⁴ Russell Trip Report.

¹³⁵⁵ SASC Hearing (September 25, 2008).

¹³⁵⁶ Ibid.

¹³⁵⁷ Ibid.

¹³⁵⁸ Russell Trip Report.

¹³⁵⁹ Ibid. at 5; Kleinman Trip Report at 2-3.

[REDACTED]

2X.¹³⁶⁰ Lt Col Kleinman told the J-2X what he had witnessed and recommended "that the session be halted immediately."¹³⁶¹ Lt Col Kleinman said the J-2X told him "[y]our judgment is my judgment. Do what you think is right."¹³⁶²

[REDACTED] Following his conversation with the J-2X, Lt Col Kleinman asked the two members of his team to step out of the interrogation booth. According to Mr. Russell:

In the hallway [Lt Col] Kleinman asked us our impression of the use of the kneeling and slaps. We both indicated that we saw nothing wrong with what was going on. He asked us our opinion of the slapping and we said they were only insult slaps and were not inflicting any pain to the detainee. [Lt Col] Kleinman indicated his disagreement and that both the slaps and kneeling were direct violations of the Geneva Conventions and could constitute a war crime. He further indicated that he wanted to intervene and stop the interrogation at that point.¹³⁶³

[REDACTED] Over the objections of the other two members of JPRA team, Lt Col Kleinman then asked the SMU TF interrogator to step out of the booth. He explained to the interrogator "how and why [the interrogator's] methods were a violation of the Geneva Convention and TF [policy]."¹³⁶⁴ According to Lt Col Kleinman, "[the interrogator] accepted my direction without reservation."¹³⁶⁵

[REDACTED] With respect to Lt Col Kleinman's actions, Mr. Russell stated:

I think the clear violation of the TF policy was of a minor nature – that being a 10-minute extension of the kneeling policy. The use of insult slaps was, in the opinion of [Lt Col] Kleinman, serious enough to stop the interrogation – an action I did not then or now feel warranted his direct intervention.¹³⁶⁶

[REDACTED] In subsequent testimony to the Committee, Mr. Russell claimed that the use of the "insult slap" was consistent with the facility's operating instructions:

Under their operating instructions at that BIF, at that time and place, we did not see anything wrong with [the use of physical pressures]. It may not have been

¹³⁶⁰ Kleinman Trip Report at 2-3.

¹³⁶¹ Ibid.

¹³⁶² Ibid.

¹³⁶³ Russell Trip Report at 5. Mr. Russell also felt that Lt Col Kleinman should have used the interrogator's chain of command at the Task Force to stop the interrogation. Testimony of Terrence Russell (August 3, 2007) at 105.

¹³⁶⁴ Kleinman Trip Report at 3.

¹³⁶⁵ Ibid.

¹³⁶⁶ [REDACTED] Kleinman Trip Report at 3. In his own trip report, Mr. Russell also noted that the use of kneeling was an authorized SMU TF technique. See Russell Trip Report at 3-4.

[REDACTED]

applied the way we would have done it, but we didn't see anything wrong with it. We advised [Lt Col] Kleinman of the same. He disagreed with us.¹³⁶⁷

[REDACTED] SMU TF SOPs reviewed by the Committee do not include slapping as an authorized technique and the SMU TF J-2X told the Committee that he was unaware of any operating instructions that would have permitted an interrogator to repeatedly slap a detainee.¹³⁶⁸

[REDACTED] Despite Mr. Russell's previous statement that he "saw nothing wrong with what was going on," he testified to the Committee that he found the SMU TF interrogator's repeated use of the insult slap to be "odd" and "in excess" of what would be used in resistance training at JPRA.¹³⁶⁹ Mr. Russell also testified that the technique, as applied by the TF interrogator, was ineffective:

[The] insult slap is just that, it's an insult. After you do it two or three times it loses its effectiveness because the [sic], in our world, the student is anticipating the slap. It loses its effectiveness if you do it more than two or three or four times.¹³⁷⁰

[REDACTED] While he did not raise any objection to their use in the interrogation, Mr. Russell stated that the techniques used at the SERE school, such as the insult slap, were not designed to elicit information from individuals but rather to "guide the student" to an appropriate resistance posture.¹³⁷¹ According to his testimony, "history has shown us that physical pressures are not effective for compelling an individual to give information or to do something" and are not useful in gaining accurate, actionable intelligence.¹³⁷² There is no indication in Mr. Russell's trip report, however, that he told anyone on the J-2X staff that the SMU TF's use of repeated slaps would be ineffective or that use of other SERE physical pressures, such as "walling", which were reportedly described for the J-2X staff, would be ineffective.

[REDACTED] Mr. Russell stated that when physical pressures are applied in the resistance phase of SERE training, medical and psychological personnel are present to observe interrogations and protect SERE school students.¹³⁷³ Mr. Russell testified that there were no medical or psychological personnel present during the interrogations he witnessed while at the SMU TF facility.¹³⁷⁴

¹³⁶⁷ Testimony of Terrence Russell (August 3, 2007) at 104-105.

¹³⁶⁸ Committee staff interview of SMU TF J2X (February 5, 2008).

¹³⁶⁹ Testimony of Terrence Russell (August 3, 2007) at 103.

¹³⁷⁰ Ibid. at 104.

¹³⁷¹ Ibid. at 111-12.

¹³⁷² Ibid. at 126-27.

¹³⁷³ Ibid. at 123.

¹³⁷⁴ Ibid.

[REDACTED]

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

(U) At some point shortly after he intervened to stop the interrogation where the detainee was placed on his knees and slapped, Lt Col Kleinman called Col Moulton.¹³⁷⁵ Lt Col Kleinman testified before the Committee that he told Col Moulton that the JPRA team was "being asked to use the full range of SERE methods in the interrogation of detainees."¹³⁷⁶ Lt Col Kleinman testified that he also told Col Moulton that he had intervened to stop interrogations at the Task Force and that the use of SERE techniques "were violations of the Geneva Convention, they weren't authorized, and we should not do them."¹³⁷⁷

(U) Lt Col Kleinman said that he also told the SMU TF Commander that the use of SERE techniques in interrogations was "unlawful" and "a violation of the Geneva Convention."¹³⁷⁸ He said that the SMU TF Commander agreed with him but there were "no orders ever issued" by the Commander not to use the techniques.¹³⁷⁹

[REDACTED] According to Lt Col Kleinman's trip report, after he spoke with Col Moulton, Col Moulton subsequently spoke to the SMU TF Commander, [REDACTED] and then called him back to tell him that the JPRA team was "cleared hot" to use "the full range of JPRA methods" on detainees, specifically including "walling, sleep deprivation, isolation, physical pressures (to include various stress positions, facial and stomach slaps, and finger pokes to the chest), space/time disorientation, [and] white noise."¹³⁸⁰

(U) Lt Col Kleinman also testified to the Committee that Col Moulton told him that the JPRA team was "cleared hot to use SERE methods" in interrogations.¹³⁸¹ Lt Col Kleinman testified that he told Col Moulton that he considered this instruction to be an illegal order and that he would not carry it out. Col Moulton said that Lt Col Kleinman "was adamant about that he thought it was against the Geneva Convention."¹³⁸²

7. *JPra Team Chief Seeks Legal Guidance (U)*

[REDACTED] Following his conversation with the JPRA Commander, Lt Col Kleinman consulted with the SMU TF lawyer who advised him that the SERE tactics "fell outside the parameters of acceptability under the [Geneva Conventions] and [Task Force] policy."¹³⁸³ Lt Col Kleinman then met with the other two members of the JPRA team to inform them of the

¹³⁷⁵ The record is unclear as to exactly what date the call occurred.

¹³⁷⁶ SASC Hearing (September 25, 2008).

¹³⁷⁷ Ibid.

¹³⁷⁸ Ibid.

¹³⁷⁹ Ibid.

¹³⁸⁰ Kleinman Trip Report at 3; Russell Trip Report at 2 ("The JPRA Commander had cleared Lenny Miller and me to use our normal and usual range of physical pressures while interrogating detainees"); Committee staff interview of Steven Kleinman (February 14, 2007); Testimony of Terrence Russell (August 3, 2007) at 99.

¹³⁸¹ SASC Hearing (September 25, 2008).

¹³⁸² Ibid.

¹³⁸³ Kleinman Trip Report at 4; Russell Trip Report at 6.

[REDACTED]

JPra Commander's order that they could use "the normal and usual range of physical pressures" during interrogations and to alert them of his concerns about the legality of that order.¹³⁸⁴ Mr. Russell wrote in his trip report:

[Lt Col] Kleinman indicated that he felt [it was] "... an illegal order" and we were exposing ourselves to possible future difficulties if we used any pressure inconsistent with the Geneva Conventions.¹³⁸⁵

(U) Lt Col Kleinman also testified to the Committee that he relayed his conversation with Col Moulton to his two JPRA colleagues, informing them that he told Col Moulton that the authority to use SERE techniques "was an unlawful order" and that he "wasn't going to have any involvement with it, and [he] didn't think that they should either."¹³⁸⁶

[REDACTED] Both Mr. Russell and Mr. Miller, the JPRA contractor, disagreed with Lt Col Kleinman's assessment.¹³⁸⁷ According to Mr. Russell, the two "indicated that the use of these moderate physical pressures, when used appropriately, were consistent with proper handling and interrogation."¹³⁸⁸ In testimony to the Committee, Mr. Russell added that he understood that the individuals held by the Task Force were considered "detained unlawful combatants" and "not automatically provided the protections of the Geneva Conventions," though he could not recall who told him this.¹³⁸⁹

[REDACTED] Shortly after Col Moulton told Lt Col Kleinman that the team was "cleared hot" to employ the full range of JPRA methods, Lt Col Kleinman recommended that the TF Legal Advisor arrange a formal briefing with the SMU TF interrogation staff and the JPRA team.¹³⁹⁰ In that meeting, Lt Col Kleinman reported that the TF Legal Advisor "set forth legal limitations that essentially excluded most of the [JPRA methods] (with the use of certain stress positions, such as kneeling on a hard floor for up to 30 minutes, cited as an acceptable method)."¹³⁹¹

(U) Lt Col Kleinman testified to the Committee that although the SMU TF lawyer agreed with him that it was unlawful to use SERE techniques in interrogations, when the lawyer later briefed interrogators on the techniques, there was no longer "any clarity" about whether or not they were illegal.¹³⁹²

[REDACTED] Mr. Russell also described the TF Legal Advisor's briefing in his trip report:

¹³⁸⁴ Russell Trip Report at 2.

¹³⁸⁵ Ibid.

¹³⁸⁶ SASC Hearing (September 25, 2008).

¹³⁸⁷ Russell Trip report at 6..

¹³⁸⁸ Ibid.

¹³⁸⁹ Testimony of Terrence Russell (August 3, 2007) at 106-07.

¹³⁹⁰ Russell Trip Report at 3; Kleinman Trip Report at 4.

¹³⁹¹ Kleinman Trip Report at 4.

¹³⁹² SASC Hearing (September 25, 2008).

[REDACTED]

The [TF Legal Advisor] discussed the [TF Commander's] expectations versus the methods of exploitation and physical pressures he had heard were being used in the BIF – including those prior to his recent arrival (2-3 weeks on site). He also discussed the status of the detainees and the fact that the BIF's detainees were not identified to the ICRC. He discussed the assumption of risk being taken by the [SMU] command if BIF personnel engaged in 'beat down' tactics or while 'engaging in torture.'¹³⁹³

[REDACTED] The TF Legal Advisor told the Committee that the SMU TF did not make status determinations for detainees, but that he advised in his briefing that the protections of Common Article 3 of the Geneva Conventions applied to those detainees under the control of the SMU TF.¹³⁹⁴

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

(U) Lt Col Kleinman testified to the Committee that after he told his two JPRA colleagues that Col Moulton had "cleared hot" their use of SERE techniques in interrogations, his colleagues decided to "demonstrate the way you handle an interrogation."¹³⁹⁵

[REDACTED] Around the time that Lt Col Kleinman met with the SMU TF Legal Advisor, Mr. Russell and Mr. Miller met separately with the SMU TF Director of Intelligence (J-2), COL Brian Keller, and his J-2X and participated in interrogations with J-2X staff.¹³⁹⁶ In one instance, Mr. Russell and Mr. Miller took the lead in the interrogation of a detainee.¹³⁹⁷ The interrogation began with the simulated release of the detainee – the detainee was permitted to clean up, leave the facility, and was escorted to a bus stop, when he was "captured" again.¹³⁹⁸ When the detainee was brought back to the SMU TF facility, Mr. Russell and Mr. Miller took physical control of the detainee and led him into a holding cell.¹³⁹⁹ Once in the holding cell, one or both of the men forcibly stripped the detainee naked.¹⁴⁰⁰ [REDACTED]

[REDACTED] ¹⁴⁰¹ He told the Committee: "we [had] done this 100 times, 1000 times with our [SERE school] students."¹⁴⁰²

¹³⁹³ Russell Trip Report at 3.

¹³⁹⁴ Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

¹³⁹⁵ SASC Hearing (September 25, 2008).

¹³⁹⁶ Russell Trip Report at 2-3.

¹³⁹⁷ Kleinman Trip Report at 3.

¹³⁹⁸ Testimony of Terrence Russell (August 3, 2007) at 114-15.

¹³⁹⁹ Ibid. at 115.

¹⁴⁰⁰ SASC Hearing (September 25, 2008). Mr. Russell testified that both he and Mr. Miller removed the detainee's clothing, but Mr. Miller told the Committee that only Mr. Russell removed the detainee's clothing. Testimony of Terrence Russell (August 3, 2007) at 116; Committee staff interview of Lenny Miller (July 24, 2007).

¹⁴⁰¹ Testimony of Terrence Russell (August 3, 2007) at 117.

¹⁴⁰² Ibid.

[REDACTED]

(U) Lt Col Kleinman also described that interrogation in testimony to the Senate Armed Services Committee. He said the detainee was driven away from the Task Force's interrogation facility to make him think he was being released and then brought back to a "bunker that was about a story ... into the ground - cement, cold, dark."¹⁴⁰³ He said:

[The detainee] was literally carried by two of the guards into the bunker struggling against them. He was taken down there. My two JPRA colleagues took over from that point... [T]hey ripped his Abaya off - not cut - they ripped it off... ripped off his underwear, took his shoes, they'd hooded him already, then they - they had shackled him by the wrist and ankles - being screamed at the entire time in his ear in English about essentially... what a poor specimen of human that he was... And then the orders were given that he was to stand in that position for 12 hours no matter how much he asked for help, no matter how much he pleaded, unless he passed out, the guards were not to respond to any requests for help.¹⁴⁰⁴

(U) Lt Col Kleinman said that he told his colleagues that what they did was "unlawful" and he stopped the interrogation.¹⁴⁰⁵

[REDACTED] Mr. Russell testified to the Committee that the detainee was naked only for "however long it took to have his clothes taken off and put the new dish-dash on again."¹⁴⁰⁶

[REDACTED] In his trip report, Lt Col Kleinman reported that he told the two other JPRA team members that he disagreed with their approach.¹⁴⁰⁷ Mr. Russell stated that the exploitation scenario was conducted after coordination with the J-2X staff and that the techniques, including isolation and sleep deprivation, were "employed in accordance with existing TF guidance and policy."¹⁴⁰⁸ While Col Kleinman testified that he intervened to stop the interrogation, Mr. Russell said that Lt Col Kleinman never raised an objection to the interrogation.¹⁴⁰⁹

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

(U) Lt Col Kleinman testified to the Committee that he intervened to stop another interrogation being conducted by SMU TF personnel.¹⁴¹⁰ Lt Col Kleinman said that "a plan was laid out on butcher paper for another detainee that involved extensive stress positions, followed by interrogation, followed by short periods of sleep."¹⁴¹¹ Lt Col Kleinman photographed the

¹⁴⁰³ SASC Hearing (September 25, 2008).

¹⁴⁰⁴ Ibid.

¹⁴⁰⁵ Ibid.

¹⁴⁰⁶ Testimony of Terrence Russell (August 3, 2007) at 116-19.

¹⁴⁰⁷ Kleinman Trip Report at 3.

¹⁴⁰⁸ Ibid. at 3-4.

¹⁴⁰⁹ SASC hearing (September 25, 2008); Testimony of Terrence Russell (August 3, 2007) at 119.

¹⁴¹⁰ SASC hearing (September 25, 2008).

¹⁴¹¹ Ibid.

[REDACTED]

plan which had been posted in plain view and described a schedule for keeping the detainee awake and placing him in stress positions.¹⁴¹² The plan listed the following schedule:

*1830 -2130	Awake
*2130-2230	Sleep
*2230-2300	On Knees
*2300-2330	Sitting Down
*2330-0030	Sit Up
*0030-0100	Sit Down
*0100-0130/0200	On Knees
*0200 - 0300	Sleep ¹⁴¹³

(U) Another photograph showed the same detainee in his cell and hooded. His hands appear handcuffed behind his back.¹⁴¹⁴ Lt Col Kleinman said that his photograph did not reflect the fact that the detainee also had his ankles shackled.¹⁴¹⁵

[REDACTED] Mr. Russell's trip report appears to confirm Lt Col Kleinman's account. It stated that Lt Col Kleinman intervened in an SMU TF "interrogator's plan for imposing a regime of sleep deprivation and physical pressures."¹⁴¹⁶ According to Mr. Russell, the proposed interrogation regimen "included an 18-hour plan to impose sleep deprivation and physical activities [REDACTED]" as well as "the use of two separate 30-minute kneeling sessions separated by 3 hours of standing or resting."¹⁴¹⁷ According to Mr. Russell, Lt Col Kleinman reportedly objected to the use of "kneeling."¹⁴¹⁸ Mr. Russell said that he and Mr. Miller felt that "the regime proposal was appropriate and well within [the SMU TF] current [Rules of Engagement] for detainee handling."¹⁴¹⁹

¹⁴¹² Committee staff interview of Lt Col Steven Kleinman (February 14, 2007); Committee staff interview of Lt Col Steven Kleinman (March 14, 2008). Lt Col Kleinman told the Committee that the TF Commander gave him permission to take photographs.

¹⁴¹³ Untitled Photograph taken by Lt Col Steven Kleinman, (September 2003).

¹⁴¹⁴ Ibid.

¹⁴¹⁵ Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

¹⁴¹⁶ In his trip report, Terrence Russell wrote that he had learned about Lt Col Kleinman's intervention from the J2-X. Russell Trip Report at 3.

¹⁴¹⁷ Ibid.

¹⁴¹⁸ Ibid. at 4.

¹⁴¹⁹ Ibid.

[REDACTED]

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

[REDACTED] While the team was in Iraq, [REDACTED] requested that JPRA develop a formal Concept of Operations (CONOP) for detainee exploitation.¹⁴²⁰ Col Moulton tasked members of the team with developing the CONOP.¹⁴²¹ Mr. Russell's trip report stated that he drafted the CONOP in Iraq and that Mr. Miller and Lt Col Kleinman reviewed it and offered suggestions.¹⁴²² He later testified to the Committee that he drafted a "skeleton of a CONOP" with Mr. Miller and that Lt Col Kleinman was aware that they were working on it.¹⁴²³ Lt Col Kleinman said that he knew that his team members were working on a CONOP, but that he did not see sections of it.¹⁴²⁴

(U) Lt Col Kleinman testified that he told Mr. Russell that he would not participate in drafting the CONOP because he "absolutely disagreed with that type of expansion of the use of SERE methods," and that his "contribution would be nothing but contrary."¹⁴²⁵

[REDACTED] While the JPRA team was still in Iraq, the draft was shared with and edited by JPRA personnel in the U.S., including Christopher Wirts, JPRA's Operations Support Office Chief.¹⁴²⁶ The CONOP, called "Concept of Operations for HVT exploitation," provided JPRA's "recommendations and guidance to USG forces conducting exploitation operations."¹⁴²⁷

[REDACTED] The September 2003 CONOP was similar to the April 2002 "Exploitation Draft Plan" that Dr. Bruce Jessen, JPRA's former senior SERE psychologist, had drafted shortly before JPRA's support to [REDACTED] the DoD General Counsel.¹⁴²⁸ As had the April 2002 exploitation draft plan, the CONOP described a JPRA-directed exploitation process and included recommendations for exploitation and captivity operations, such as "tailoring detainee punishment consequences to maximize cultural undesirability."¹⁴²⁹

[REDACTED] The September 2003 CONOP also identified "critical operational exploitation principles," including:

[REDACTED]

¹⁴²⁰ [REDACTED] JPRA, *Executive Summary of JPRA Support* [REDACTED] (undated)

¹⁴²¹ [REDACTED] Ibid.; Russell Trip Report at 4.

¹⁴²² Russell Trip Report at 4.

¹⁴²³ Testimony of Terrence Russell (August 3, 2007) at 120-121.

¹⁴²⁴ Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

¹⁴²⁵ SASC Hearing (September 25, 2008).

¹⁴²⁶ Russell Trip Report at 4.

¹⁴²⁷ *Concept of Operations For HVT Exploitation* (Undated), attachment to JPRA, *Executive Summary of JPRA Support* [REDACTED] (undated) (hereinafter "Concept of Operations for HVT Exploitation - Version 1").

¹⁴²⁸ [REDACTED] *Exploitation Draft Plan* (Undated); *Concept of Operations For HVT Exploitation - Version 1*

¹⁴²⁹ Similar recommendations had also been listed in the February 28, 2003 JPRA memorandum on "prisoner handling recommendations" that JPRA had provided to SOUTHCOM in February 2002.

[REDACTED]

[10] Controlling authority sets [Rules of Engagement] prior to initiating process within the Torture Convention [11] Established the latitude and process for the HVT team to offer concessions for validated information or cooperation of the HVT. [REDACTED]

[REDACTED] Those exploitation principles were similar to those that had been included in the exploitation draft plan nearly a year and a half earlier. In addition, the September 2003 JPRA CONOP listed specific interrogation techniques and incorporated portions of the March 6, 2003 DoD Interrogation Working Group draft report. JPRA personnel considered the Working Group report authoritative guidance on U.S. policy and law.¹⁴³¹

[REDACTED]

¹⁴³³ Mr. Wirts said that the DoD Working Group draft reflected material that the Working Group had gleaned from JPRA on SERE training and that it was, in turn, used to formulate the HVT exploitation CONOP.¹⁴³⁴ A copy of a CONOP that incorporated interrogation techniques from the Working Group draft was circulated while the team was still in Iraq, and was sent to CAPT Daniel Donovan, the JFCOM Staff Judge Advocate (SJA), on September 23, 2003.¹⁴³⁵

¹⁴³⁰ [REDACTED] *Concept of Operations For HVT Exploitation - Version 1.*

¹⁴³¹ Ibid. (noting that "HVT exploitation operations will be conducted within the intent of U.S. policy and law, [in accordance with] U.S. interpretation as identified" in the March 6, 2003 Working Group report.)

¹⁴³² [REDACTED] *Concept of Operations For HVT Exploitation - Version 1.*

¹⁴³³ Ibid.

¹⁴³⁴ Committee staff interview of Christopher Wirts (January 4, 2008).

¹⁴³⁵ [REDACTED] Following their trip, JPRA personnel also completed an "Executive Summary" of their support to the SMU TF that described the visit and summarized observations and recommendations provided to the SMU TF Commander. [REDACTED] Executive Summary of JPRA Support [REDACTED] (undated).

[REDACTED]

11. JPRA Team Leaves Iraq (U)

(U) According to the DoD Inspector General's August 2006 report, when it "became apparent that friction was developing" between the SMU TF and the JPRA team, "the decision was made to pull the team out [of Iraq] before more damage was done to the relationship between the two organizations."¹⁴³⁶ Lt Col Kleinman referred to the DoD IG report's statement that "friction was developing" as an understatement and said that he felt his life was being threatened at the SMU TF.¹⁴³⁷ He recalled one instance (after he stopped what he believed to be in violation of the Geneva Conventions) in which an SMU TF member told him, while sharpening a knife, to "sleep lightly," noting that they did not "coddle terrorists" at the SMU TF.¹⁴³⁸

[REDACTED] The SMU TF Legal Advisor told the Committee that JPRA had no business at the SMU TF facility either assisting in or conducting interrogations and that he sought to have the team removed.¹⁴³⁹ The Legal Advisor said that he met with [REDACTED] the SMU TF Commander, and told him that SERE training was not meant for detainees and that JPRA's presence had the potential to lead to abuse. He also recalled telling the Commander that JPRA was not qualified or trained to perform interrogations. The Legal Advisor said that [REDACTED] did not act on his concerns.

[REDACTED] Mr. Russell wrote in his trip report that the SMU TF Operations Officer (J-3) also recommended to [REDACTED] that the JPRA team should leave the facility, noting that the J-3 "was particularly concerned over the [JPRA] CONOP having been sent [to JPRA headquarters] without his staff's security review."¹⁴⁴⁰ On September 22, 2003, the JPRA Commander directed Lt Col Kleinman and Mr. Miller to return to the U.S., but told Mr. Russell to remain in place for "the possible arrival of a follow-up team."¹⁴⁴¹ On September 23, 2003, the team's original

¹⁴³⁶ DoD IG Report at 28.

¹⁴³⁷ Committee staff interview of Lt Col Steven Kleinman (March 14, 2008).

¹⁴³⁸ Ibid.

¹⁴³⁹ Committee staff interview of SMU TF Legal Advisor 2 (March 12, 2008).

¹⁴⁴⁰ Russell Trip Report at 4.

¹⁴⁴¹ Ibid. [REDACTED] The initial decision to keep Mr. Russell in theater may be relevant to discussions Col Moulton was having with CENTCOM about the possibility of sending another three-man team to Iraq. Shortly after the original team left for Iraq, Col Moulton began discussions about sending a JPRA team to assist CENTCOM. On September 3, 2003, Col Moulton contacted the JPRA representative at CENTCOM and explained the genesis of their SMU TF mission and how he thought such support might be expanded to other missions and organizations throughout the CENTCOM AOR. Col Moulton wrote:

I've been in contact with [REDACTED] in Baghdad. He was the one who requested the [JPRA team] to assist in interrogation training. He also mentioned that there are several entities doing interrogations, and there is no standardization/methodology on how to conduct / coordinate the process. He asked me to bring a team over to observe what they are doing and what others are doing. I think it would be a good idea to bring a team over to observe what they are doing and what others are doing. I think it would be a good idea to bring a team forward (3 person - myself, Chris Wirts, Terry Russell) to visit the various interrogation facilities and report back to JCS (through CENTCOM and the JFCOM/LL folks) with observations and potential recommendations.

[REDACTED]

[REDACTED]

scheduled departure date, JPRA informed the team that all three team members should leave Iraq.¹⁴⁴²

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

(U) The same day the JPRA team returned home from Iraq, a copy of the JPRA HVT exploitation CONOP was sent to CAPT Donovan, the JFCOM SJA.¹⁴⁴³ CAPT Donovan commented on the CONOP in a September 26, 2003 email to Col Moulton, JPRA Deputy Commander John Atkins, OSO Chief Christopher Wirts and others, and circulated a version of the CONOP with his edits and comments.

(U) In his email, CAPT Donovan stated that JPRA should not rely on the March 6, 2003 Working Group report as "authoritative DoD guidance." He wrote that, although the Secretary had approved certain counter-resistance techniques during interrogations of unlawful combatants at GTMO, not all of the techniques listed in the Working Group report had been approved for use.¹⁴⁴⁴ CAPT Donovan also raised serious concerns about the legality of the interrogation techniques in the CONOP emphasizing that, unlike in Afghanistan and at GTMO, the Geneva Conventions applied in Iraq. He wrote:

Unlike OEF-Afghanistan, in which the Taliban and Al-Qaida enemy 'forces' were all deemed to be UNLAWFUL combatants NOT legally entitled to the full protections of the Geneva conventions, Operation Iraqi Freedom (OIF) was executed as a CONVENTIONAL armed conflict in which the vast majority of enemy forces were LAWFUL combatants. Therefore, almost all captured personnel within Iraq are legally entitled to either prisoner of war (POW) or civilian internee (CI) status which means they get the full protections of the Geneva Conventions. Many of the counter-resistance techniques approved by SECDEF for use on UNLAWFUL combatants detained at GTMO would not/not be legal under the Geneva Conventions if applied to POWs or CIs in Iraq.¹⁴⁴⁵

[REDACTED] In editing the CONOP, CAPT Donovan not only struck references to several interrogation techniques that had been included in the March 6, 2003 draft Working Group

[REDACTED] Col Moulton also stated that he had pitched the idea to JFCOM:

Having said that, I think the request needs to come from CENTCOM, not just [REDACTED] I can support, and have already presented the concept to JFCOM. We just need the invite. Long-term is to identify the need for an OSD OPR [Office of Primary Responsibility] for strategic debriefing/interrogation. To put it into football terms, we (JPRA) are the quarterback for defensive resistance operations - there is no quarterback for offensive resistance operations. Where that responsibility would ultimately fall (JPRA [REDACTED]) is not the issue, but rather that someone has to take the lead.

Email from Col Moulton to JPRA CENTCOM LNO (September 3, 2003).

¹⁴⁴² Russell Trip Report at 6; see also email from Mike Lampe to David Ayres (August 28, 2003).

¹⁴⁴³ Email from CAPT Donovan to Col Moulton, Col Atkins, Mr. Wirts, and Mr. Jagielski (September 26, 2003).

¹⁴⁴⁴ Ibid.

¹⁴⁴⁵ Ibid.

[REDACTED]

report, but also noted that even those techniques approved by the Secretary of Defense for use at GTMO might not be lawful for use on detainees in Iraq.¹⁴⁴⁶

[REDACTED] CAPT Donovan also substantially revised JPRA's "critical operational exploitation principles" by, for example, adding that detainee treatment must be "in accordance with the approved [Rules of Engagement]" and clarifying that Rules of Engagement must be within U.S. law and policy including – but not simply limited to – the Torture Convention.¹⁴⁴⁷ CAPT Donovan struck JPRA's reference to "constant sensory deprivation" completely, noting that the technique was neither approved by the March 6, 2003 Working Group report nor by the Secretary of Defense in his April 16, 2003 guidance for SOUTHCOM.¹⁴⁴⁸

[REDACTED] Days later, CAPT Donovan raised his concerns about the CONOP to LTG Wagner, JFCOM's Deputy Commander, and Maj Gen James Soligan, JFCOM's Chief of Staff, in anticipation of a scheduled visit by the two to JPRA.¹⁴⁴⁹ CAPT Donovan stated that while it made "a certain amount of sense to seek JPRA's advice regarding interrogation techniques that [had] been successfully used against us by our enemies," he was concerned that the SMU TF "may have gone a bit further by asking JPRA to develop a CONOP for "more effective" interrogations [by the SMU] of HVTs captured in Iraq."¹⁴⁵⁰ He expressed particular concerns with the "interrogation techniques" included in the CONOP:

A number of the 'interrogation techniques' suggested by JPRA in their draft CONOP are highly aggressive (such as the 'water board') and it probably goes without saying that if JPRA is to include such techniques in a CONOP they prepare for an operational unit in another [Area of Responsibility], they need to be damn sure they're appropriate in both a legal and a policy sense.¹⁴⁵¹

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

(U) In May 2004, the Department of Defense (DoD) Inspector General (IG) initiated a review of DoD directed reports of detainees abuse.¹⁴⁵² As part of that review, the DoD IG looked into JPRA's "offensive" interrogation support. In response to questions from the DoD IG, CAPT Alan Kaufman, the JFCOM SJA, initiated an inquiry into JPRA's September 2003 support to the SMU TF in Iraq. According to CAPT Kaufman, the scope of the JFCOM inquiry was narrow, focusing only on whether or not the incidents described in Lt Col Kleinman's trip report had

¹⁴⁴⁶ The techniques that CAPT Donovan struck included [REDACTED]

[REDACTED] *Concept of Operations For HVT Exploitation at 6 (hereinafter "Concept of Operations For HVT Exploitation –Version 2").*

¹⁴⁴⁷ *Concept of Operations For HVT Exploitation –Version 2 at 2.*

¹⁴⁴⁸ Ibid.

¹⁴⁴⁹ Email from CAPT Dan Donovan to LTG Wagner, Maj Gen Soligan (September 29, 2003).

¹⁴⁵⁰ Ibid.

¹⁴⁵¹ Ibid.

¹⁴⁵² DoD IG Report.

[REDACTED]

been reported up the chain of command to JFCOM.¹⁴⁵³ On September 23, 2005, after JFCOM concluded its inquiry, JFCOM's Deputy Commander LTG Wagner sent a memo to the DoD IG stating:

This command looked into the information flow between the requesting unit, Joint Personnel Recovery Agency, (JPRA) and the chain of command at USJFCOM with regard to JPRA's participation in the two subject missions to assist in the global war on terror. While most requests and decisions were verbal, I concluded that information did flow up the chain of command to the appropriate authority.

Action was taken based on JPRA Commanding Officer's (CO) judgment and input from the chain of command . . .¹⁴⁵⁴

(U) The memo continued:

The actions Lt Col Kleinman witnessed did occur. However, all others involved, including the JPRA [Commanding Officer] and the [Commanding Officer] of the task force believed them to be authorized actions under the existing decisions by DoD General Counsel. The [Commanding Officer] conveyed this to Lt Col Kleinman both during and after the deployment. Lt Col Kleinman did not seek any other response or relief, nor take any issue up his chain of command.¹⁴⁵⁵

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

1. CJTF-7 Commander Identifies Deficiencies (U)

(U) During the summer of 2003 Combined Joint Task Force 7 (CJTF-7) assumed control of coalition forces in Iraq from its predecessor, the Combined Forces Land Component Command (CFLCC). The Commander of CJTF-7, LTG Sanchez, said that when he took over from CFLCC he identified deficiencies with existing intelligence operations.¹⁴⁵⁶ LTG Sanchez said that he participated in regular video teleconferences and phone calls with CENTCOM and the Office of the Secretary of Defense (OSD) during which he shared his concerns about his command's intelligence capabilities and asked for assistance. LTG Sanchez stated:

I was very concerned about our ability to really push the envelope to the limits of our authority in interrogations. I went back to Washington and said "You've got to send us some help because this is a problem that is way beyond anything we could imagine and it's a problem that hasn't been faced by our Army."¹⁴⁵⁷

¹⁴⁵³ Committee staff interview of CAPT Alan Kaufman (September 17, 2007).

¹⁴⁵⁴ The "two" missions refer to the September 2003 trip to Iraq and the September 2002 JPRA training at Fort Bragg. Memo from LTG Robert Wagner, *Follow up response to June 2003 USJFCOM IG Meeting on DoD IG Inquiry to USJFCOM of 27 May 2005* (September 23, 2005)

¹⁴⁵⁵ Ibid.

¹⁴⁵⁶ Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹⁴⁵⁷ Army IG, Interview of LTG Ricardo Sanchez (November 23, 2004) at 3.

[REDACTED]

(U) Even before the CJTF-7 Commander sought assistance, however, discussions had apparently taken place about whether to send MG Geoffrey Miller, the GTMO Commander, to Iraq to assess operations there. In May 2003, before CJTF-7 took command in Iraq from CFLCC, LTG Ronald Burgess, the Director for Intelligence (J-2) at the Joint Staff told MG Miller that a request would be forthcoming for him to lead an assessment trip to Iraq.¹⁴⁵⁸ According to an investigation conducted by MG George Fay and LTG Anthony Jones, the Joint Staff later requested that SOUTHCOM send a team to assist CENTCOM and the Iraq Survey Group "with advice on facilities and operations specific to screening, interrogations, HUMINT collection, and interagency integration in the short and long term."¹⁴⁵⁹

(U) The Under Secretary of Defense for Intelligence (USDI) Stephen Cambone said that MG Miller was asked to go to Iraq "at my encouragement, to take a look at the situation as it existed there."¹⁴⁶⁰ LTG William Boykin, the Deputy Under Secretary of Defense for Intelligence and Warfighter Support said that the decision to send MG Miller to Iraq was made in a meeting that included USDI Cambone and the Secretary of Defense.¹⁴⁶¹

2. GTMO Assessment Team Travels to Iraq (U)

[REDACTED] From August 31 to September 10, 2003, MG Miller led a team to assess intelligence operations in Iraq.¹⁴⁶² The JTF-GTMO Commander was accompanied by several JTF-GTMO and former JTF-GTMO staff, including LTC Diane Beaver, the former SJA, and David Becker, the former Interrogation Control Element (ICE) Chief. Additionally, MG Miller brought representatives from the CIA and the DoD Criminal Investigative Task Force (CITF). MG Miller said that the purpose of his trip was to "make an assessment for the chain of command," about the ability of U.S. forces in Iraq to conduct "strategic interrogation and intelligence development and detention operations in theater."¹⁴⁶³

(U) The day after arriving in Iraq, MG Miller met with LTG Sanchez and described the purpose of the assistance visit.¹⁴⁶⁴ MG Miller said that his team was aware that the Geneva Conventions applied in Iraq and told LTG Sanchez that he would have to decide what recommendations were applicable to his command. MG Miller also met with MG Barbara Fast, the CJTF-7 Director of Intelligence, and gave her the same briefing.

¹⁴⁵⁸ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 65; AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade (August 24, 2004) at 57 (hereinafter "Fay Report").

¹⁴⁵⁹ Fay Report at 57.

¹⁴⁶⁰ Allegations of Mistreatment of Iraqi Prisoners, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 7, 2004, May 11, 2004) at 41, 98.

¹⁴⁶¹ Army IG, Interview of LTG William Boykin (November 17, 2005) at 3.

¹⁴⁶² MG Geoffrey Miller, *Assessment of DoD Counterterrorism Interrogation and Detention Operations in Iraq* (U) (undated) at 2 (hereinafter "Miller Report").

¹⁴⁶³ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 65.

¹⁴⁶⁴ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

[REDACTED]

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

(U) Following an initial visit to the Corps Holding Area at Camp Cropper, MG Miller's assessment team visited the Iraq Survey Group (ISG) facilities.¹⁴⁶⁵ The ISG was established in June 2003 with the mission to find weapons of mass destruction (WMD) or evidence of weapons of mass destruction and to provide support to the CIA special advisor.¹⁴⁶⁶ As part of its effort to gather intelligence on WMD, the ISG interrogated and debriefed high value detainees, such as former members of Saddam Hussein's regime.¹⁴⁶⁷ When MG Miller's team arrived at the facility, they received a briefing from ISG personnel, toured the facilities, and observed ongoing operations.¹⁴⁶⁸

(U) Chief Warrant Officer Brian Searcy, who was Chief of Interrogation at the ISG accompanied MG Miller and his team on the tour. CWO Searcy told the Committee that during the tour, MG Miller remarked that the ISG was "running a country club" and suggested that they were too lenient with detainees.¹⁴⁶⁹ He said that MG Miller recommended the ISG shackle detainees and make them walk on gravel rather than on concrete pathways to show the detainees who was in control. CWO Searcy also recalled that the JTF-GTMO Commander suggested that the ISG "GTMO-ize" their facility.¹⁴⁷⁰

¹⁴⁶⁵ Several members of the assessment team recalled the conditions at the Corps Holding Area. LTC Beaver described the facility as "grotesque" and recalled telling lawyers at CJTF-7 about "stagnant water, maggots, feces approximately 6 inches tall on the toilets and running down the sides of the toilets." She told the Committee that she saw senior non-commissioned officers who were oblivious to their surroundings and that she recalled one guard tell the visiting team "I don't give an [expletive] if [the Iraqi prisoners] die."

MG Miller said he was "dismayed and shocked at the operations" at Camp Cropper, referring to them as "inappropriate, unprofessional, and not humane." MG Miller also called it "shocking" that "the guards didn't even know the rules of engagement for use of deadly force." MG Miller said that he told LTG Sanchez: "you have a major problem at Camp Cropper and you need to take action now." According to MG Miller, LTG Sanchez asked him to share his assessment with the 800th MP BDE Commander BG Janis Karpinski and direct that "corrections be made in the next 48 hours." MG Miller said that, in a subsequent meeting with BG Karpinski, he met with "significant pushback." He recalled his reaction in that meeting. "[I] kind of cleared the room and told General Karpinski, I said these are the findings, if you don't agree with them, let's you and I go see General Sanchez because he has directed that you take action to have corrective action be taken and in place within 48-hours. And so she called the staff back in and started to go forward with it."

MG Miller told the Committee that BG Karpinski accepted the guidance, but not willingly. According to LTC Beaver, the Corps Holding Area at Camp Cropper was closed shortly after the team left Iraq. Sworn Statement of LTC Diane Beaver (December 10, 2004) at 1; Committee staff interview of LTC Diane Beaver (November 9, 2007); Army IG, Interview of MG Geoffrey Miller (June 28, 2005) at 68.

¹⁴⁶⁶ DoD IG, Interview of LTG Keith Dayton (May 25, 2005) at 10.

¹⁴⁶⁷ Ibid. at 52.

¹⁴⁶⁸ Committee staff interview of Brian Searcy (June 4, 2007).

¹⁴⁶⁹ Ibid.

¹⁴⁷⁰ Ibid.

[REDACTED]

[REDACTED]

(U) MG Miller did not recall referring to the ISG as a "country club" and said that, as far as he knew, he "never used the word GTMO-ize."¹⁴⁷¹ However, he did recall telling ISG personnel that he was troubled that the ISG were treating detainees with too much respect, which was not, in his opinion, how prisoners ought to be treated.¹⁴⁷²

(U) Mike Kamin, the ISG's Collection Manager said that LtCol Ken Rapuano, the ISG's Joint Interrogation and Debriefing Center (JIDC) Chief, was "energized" after meeting with MG Miller and said that the GTMO Commander had told him about techniques like temperature manipulation and sleep deprivation.¹⁴⁷³ According to Mr. Kamin, ISG JIDC personnel balked at the idea of implementing such techniques. [REDACTED] an ISG strategic debriefer said that he wrote a letter to his chain of command stating that he would resign if the techniques were implemented.¹⁴⁷⁴

(U) LtCol Rapuano said that he met with MG Miller and members of his team in a meeting with MG Keith Dayton, the ISG Commander, and other members of ISG's leadership. LtCol Rapuano said that he did not recall a discussion of specific interrogation techniques but did recall "some discussion of procedures for air conditioning cells."¹⁴⁷⁵ LtCol Rapuano said did not recall any discussions of sleep deprivation as an interrogation technique.

(U) At the end of the visit, MG Miller met with MG Dayton and members of his staff. MG Dayton said that MG Miller told him that the ISG was "not getting much out of these people" and was "not getting the maximum."¹⁴⁷⁶ MG Dayton said he asked what was meant by that and was told "you haven't broken [the detainees]" psychologically.¹⁴⁷⁷ MG Dayton said that MG Miller told him that he would "get back to you with some ideas of how you can perhaps deal with these people where you can actually break them, some techniques you can use."¹⁴⁷⁸ The ISG Commander stated:

I remember very clearly saying, "Geoff, slow down. We're not changing anything right now. You know, we think we're within the rules. If you want me to change something,

¹⁴⁷¹ Committee staff interview of MG Geoffrey Miller (December 6, 2007); Interview of MG Geoffrey Miller for Javal Davis trial (August 21, 2004). The former JTF-GTMO ICE Chief David Becker, who was present during the ISG visit did not recall the MG Miller using the term "GTMO-ize." Committee staff interview of David Becker (September 17, 2007).

¹⁴⁷² Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁴⁷³ Committee staff interview of Mike Kamin (May 30, 2007).

¹⁴⁷⁴ Committee staff interview of [REDACTED] (May 23, 2007).

¹⁴⁷⁵ LtCol Rapuano said that "the issue discussed, without decision, was if it was appropriate that detainees were being provided cooler living conditions than most Coalition personnel had in their living quarters and work areas, and whether only the cooperative detainees should be rewarded with cooler cells." Kenneth Rapuano answers to September 3, 2008 written questions from Senator Carl Levin (September 16, 2008).

¹⁴⁷⁶ DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 33.

¹⁴⁷⁷ Ibid.

¹⁴⁷⁸ Ibid.

[REDACTED]

[REDACTED]

you give me something in writing that you think needs to be changed. I'll have my lawyers look at it.¹⁴⁷⁹

(U) Although MG Miller recalled saying that he was troubled that detainees at the ISG were being treated with too much respect, he did not recall using the term "break."¹⁴⁸⁰ As to techniques to get more information from detainees, MG Miller said he only recalled discussing the possibility of ISG interrogating detainees more frequently. According to MG Dayton, MG Miller never followed up with him after the trip.¹⁴⁸¹

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

[REDACTED] Following the visit to the ISG, MG Miller, John Antonitis, the former Director of the Joint Interrogation Group at JTF-GTMO, and the Superintendent of Camp Delta at JTF-GTMO, visited the Special Mission Unit (SMU) Task Force (TF) facility. [REDACTED] the SMU TF Commander, said he had contacted MG Miller at JTF-GTMO to request assistance with his detention and interrogation operations.¹⁴⁸² MG Miller, however, said that [REDACTED] did not request the visit and that visiting the SMU TF was not even on his initial itinerary.¹⁴⁸³ In fact, MG Miller described [REDACTED] as not "open" to a visit and said that when his staff called the SMU TF to schedule the visit, they initially said "no" to the visit.

[REDACTED] MG Miller said that he and two other members of his team met with [REDACTED] and a few of his operators for about 45 minutes to an hour at the SMU TF facility.¹⁴⁸⁴ The JTF-GTMO Commander did not see an SOP for SMU TF interrogations and recalled that the SMU TF Commander told him the SMU TF was using operators as interrogators. MG Miller said that he told [REDACTED] that he needed to establish interrogation authorities and obtain qualified interrogators. For several months prior to his meeting with MG Miller, SMU TF Legal Advisors had tried, without success, to get [REDACTED] to sign an interrogation policy for the facility under his command.¹⁴⁸⁵

[REDACTED] While she did not accompany the JTF-GTMO Commander on his visit to the SMU TF, LTC Beaver, the former JTF-GTMO SJA, said that a Legal Advisor for the SMU TF contacted her and arranged to meet with her at Camp Victory.¹⁴⁸⁶ According to LTC Beaver, the SMU TF Legal Advisor raised concerns with her about physical violence being used by SMU TF personnel during interrogations, including punching, choking, and beating detainees.¹⁴⁸⁷ He told

¹⁴⁷⁹ Ibid. at 34.

¹⁴⁸⁰ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁴⁸¹ DoD IG, Interview of MG Keith Dayton (May 25, 2005) at 34; Committee staff interview of LTG Keith Dayton (June 1, 2007).

¹⁴⁸² Committee staff interview of [REDACTED] (October 10, 2007).

¹⁴⁸³ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁴⁸⁴ Ibid.

¹⁴⁸⁵ See Section XII A, *supra*.

¹⁴⁸⁶ Sworn Statement of LTC Diane Beaver (December 10, 2004) at 1.

¹⁴⁸⁷ Committee staff interview of LTC Diane Beaver (November 9, 2007).

[REDACTED]

her that he was "risking his life" by talking to her about these issues.¹⁴⁸⁸ LTC Beaver told the Committee that the SMU Legal Advisor said he had also raised these issues with the Commander of the SMU TF, but that [REDACTED] was not receptive to his concerns.

[REDACTED] LTC Beaver told the Committee that she informed both COL Marc Warren (the CJTF-7 SJA) and MG Miller about her conversation with the SMU TF Legal Advisor.¹⁴⁸⁹ When he met with the Committee, MG Miller did not recall LTC Beaver bringing those concerns to his attention.¹⁴⁹⁰ A slide presentation summarizing the GTMO assessment team's visit to Iraq, however, stated that there were "concerns about [SMU TF] interrogation practices such as physical contact and choking."¹⁴⁹¹ The same presentation noted that other governmental agencies "won't interrogate at [the SMU TF] facility because of current treatment concerns."¹⁴⁹²

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

(U) During their assessment visit, the JTF-GTMO Commander's team held several meetings with CJTF-7 interrogation personnel at Abu Ghraib and Camp Victory. According to COL Thomas Pappas, the 205th MI BDE Commander, conversations with MG Miller focused on the range of intelligence capabilities that would enable effective interrogations.¹⁴⁹³ COL Pappas stated that the "tenor of the discussions was that we had to get tougher with the detainees."¹⁴⁹⁴

(U) CPT Wood, the Interrogation Officer in Charge (OIC) at Abu Ghraib said her conversations with the JTF-GTMO Commander "centered on renovations and improvements of facilities, challenges of interrogation operations, and the need for increased [Military Police/Military Intelligence] cooperation."¹⁴⁹⁵ CPT Wood believed that MG Miller and his team wanted to build a "miniature Guantanamo Bay."¹⁴⁹⁶ In her view, however, the GTMO concept was not applicable to Abu Ghraib. She stated:

... Abu Ghraib wasn't GTMO. The prison was an austere environment; it was not conducive to interrogation operations like GTMO. That was actually built and designed to facilitate interrogation operations. We didn't have the MP force that was necessary for such a high population and we were frequent targets of small arms and mortar attacks. We worked in a hundred and thirty degree weather

¹⁴⁸⁸ Ibid.

¹⁴⁸⁹ Ibid.

¹⁴⁹⁰ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁴⁹¹ Slide presentation, *The GTMO Commander - Team Visit to Iraq* (undated).

¹⁴⁹² Ibid.

¹⁴⁹³ COL Pappas stated that the discussions were broad but focused on the understanding that "interrogation is what drives the train," as well as developing a "singular unified purpose that was to extract information" from detainees. Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10, 12, 15.

¹⁴⁹⁴ Ibid. at 10.

¹⁴⁹⁵ Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 2.

¹⁴⁹⁶ Army IG, Interview of CPT Carolyn Wood (May 8, 2006) at 12.

[REDACTED]

without air conditioning and we went through the winter without heat. Most of the detainees were not of intelligence value.¹⁴⁹⁷

(U) MG Miller said that he spent parts of three days at Abu Ghraib with COL Pappas and CPT Wood discussing how to improve operations.¹⁴⁹⁸ LTG Sanchez recalled that the team "recommended the creation of a command policy" on interrogations and the team provided CJTF-7 with electronic copies of SOPs and a copy of a Joint Staff policy memorandum entitled "Interrogation Techniques in the War on Terrorism."¹⁴⁹⁹ According to MG Miller, members of his assessment team also discussed interrogation authorities and techniques during their meetings with CJTF-7 personnel.¹⁵⁰⁰

(U) CPT Wood said that members of the GTMO assessment team had, in their possession, copies of the proposed interrogation policy she had copied from the SMU Task Force's interrogation policy and submitted to her chain of command prior to the assessment team's visit.¹⁵⁰¹ That proposed policy included presence of military working dogs, stress positions, sleep management, 20-hour interrogations, isolation, and yelling, loud music, and light control.¹⁵⁰² CPT Wood said that a member of the GTMO assessment team referred to her proposal as a "good start," but told her that CJTF-7 "should consider something along the lines of what's approved for use in [GTMO]."¹⁵⁰³ LTC Beaver recalled reviewing CPT Wood's proposed SOP. LTC Beaver said that she was concerned about the SOP because she knew that "in a Geneva setting, it was potentially a problem," that she brought it to the attention of COL Marc Warren, the CJTF-7 SJA and recommended that he review it.¹⁵⁰⁴

(U) David Becker, the former JTF-GTMO ICE Chief, recalled discussing stress positions, dogs, and nudity with COL Pappas during the visit. Mr. Becker said:

[W]hat I told Pappas was, look I understand they're doing all kinds of different approaches out there. And I talked about the memo that was approved for Guantanamo at one point. I said look, when you use stress positions; when you use dogs; when you use - I mean when you use stress positions, dogs, nakedness . . . the concept of the conversation was as you develop these techniques, talk to the interrogators. Figure out what they want to use and put it in writing. And you have to establish left and right lanes in the road for the conduct of interrogations. And you've got to do it in writing. And then you've got to build the interrogation

¹⁴⁹⁷ Army IG, Interview of CPT Carolyn Wood (August 15, 2006) at 45.

¹⁴⁹⁸ Army IG, Statement of MG Geoffrey Miller (June 19, 2004) at 2.

¹⁴⁹⁹ Statement of LTG Ricardo Sanchez (October 2004) at 7.

¹⁵⁰⁰ Army IG, Statement of MG Geoffrey Miller (June 19, 2004) at 2.

¹⁵⁰¹ Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 6; see Section XII E, *supra*.

¹⁵⁰² Alpha Company, 519th MI BN SFIF Interrogation TTPS (August 27, 2003).

¹⁵⁰³ Sworn Statement of CPT Carolyn Wood (May 21, 2004) at 6.

¹⁵⁰⁴ SASC Hearing (June 17, 2008); Committee staff interview of LTC Beaver (October 11, 2007).

[REDACTED]

plan and you've got the interrogators to stick to it. And that's what I said. And the "use of dogs" came up in that conversation.¹⁵⁰⁵

(U) COL Pappas recalled discussions with the GTMO assessment team about dogs being "effective in doing interrogations with Arabs" and talk of "Arabs being fearful of dogs."¹⁵⁰⁶ COL Pappas said that while no one from MG Miller's team said "okay, use the dogs while you're doing an interrogation" there was discussion "about 'setting conditions for interrogations.'"¹⁵⁰⁷ COL Pappas later authorized the use of dogs in interrogations at Abu Ghraib.¹⁵⁰⁸

(U) COL Pappas also recalled discussing dogs with MG Miller during the visit. In a February 2004 interview, COL Pappas said that the use of dogs had been "a technique that [he] had discussed with Miller" during the JTF-GTMO assistance visit to Iraq.¹⁵⁰⁹ COL Pappas stated that MG Miller "said that they used military working dogs, and that they were effective in setting the atmosphere for which . . . you could get information."¹⁵¹⁰ In a later interview, COL Pappas again described his discussions with MG Miller:

There was never any discussion [with the JTF-GTMO Commander] of the execution of how the dogs would be used. Now he did say that dogs were an effective technique to use with the detainees. He did say we want to make sure we control the detainee at all times. The I-bolts in the floor came from MG Miller's team . . . He did meet with some of the interrogators and told them to be more aggressive, but he never told them how. His overtone was to be more aggressive, but I never heard him say take dogs into the booths or anything like that.¹⁵¹¹

(U) MAJ David DiNenna, the Operations Officer (S-3) of the 320th MP BN also recalled a discussion with MG Miller about dogs. According to MAJ DiNenna, during a meeting at Abu Ghraib, MG Miller asked him whether or not they had military working dogs.¹⁵¹² MAJ DiNenna

¹⁵⁰⁵ Army IG, Interview of David Becker (September 22, 2005) at 25.

¹⁵⁰⁶ Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10. In a 2007 interview with Committee staff, COL Pappas recalled having discussions with former JTF-GTMO ICE Chief David Becker, but did not recall if the use of dogs came up in those discussions. Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹⁵⁰⁷ Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 10.

¹⁵⁰⁸ Memorandum from COL Thomas Pappas to LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

¹⁵⁰⁹ Army 15-6 Investigation, Interview of COL Thomas Pappas (February 12, 2004) at 28.

¹⁵¹⁰ *Ibid.* at 29.

¹⁵¹¹ Sworn Statement of COL Thomas Pappas (January 25, 2006) at 14.

¹⁵¹² MAJ David DiNenna, answers to February 13, 2006 written questions (undated). MAJ DiNenna wrote that he had "requested dogs in June 2003 when I first arrived at Abu Ghraib. We had 2 MWD [Military Working Dog] teams at Camp Bucca prior to that and they proved to be a tremendous force multiplier. I requested MWD from that point until they arrived in November 2003."

[REDACTED]

[REDACTED]

told MG Miller that they did not, but that he had "requested them when [he] first arrived at Abu [Ghraib], and since that time, had made numerous requests."¹⁵¹³ MAJ DiNenna said:

MG Miller then looked at COL Pappas and stated that dogs have been extremely useful at GTMO. He stated, "These people are scared to death of dogs, and the dogs have a tremendous affect."¹⁵¹⁴

(U) MAJ DiNenna said that he was "concerned that [MG Miller] was implying MI would receive the dogs at Abu [Ghraib], yet I desperately needed them as a force multiplier for the facilities."¹⁵¹⁵

(U) MG Miller maintained that he and COL Pappas "never discussed using dogs in interrogations."¹⁵¹⁶ He stated that his discussions about dogs with COL Pappas were "in the context of security operations and force protection."¹⁵¹⁷ MG Miller said, however, that he did not discuss the use of dogs at all with BG Janis Karpinski, the Commander of the 800th MP BDE or anyone else in her unit, which was responsible for security operations and force protection at the prison.¹⁵¹⁸

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

(U) During his assessment visit, the JTF-GTMO Commander provided an "interim update" to LTG Sanchez and recommended that CJTF-7 "establish interrogation authorities so the interrogators understand what their limits are."¹⁵¹⁹ MG Miller stated that he also directed LTC Beaver to "let [CJTF-7] see what we use at Guantanamo as a template," referring to the Secretary of Defense's April 16, 2003 guidance for SOUTHCOM.¹⁵²⁰ MG Miller stated that, with respect to GTMO's guidance from the Secretary, he told LTG Sanchez:

[T]he first caveat was that the Geneva Convention applied here. You must use only Geneva Convention authorities. You may not use anything other unless you get approval from SecDef to go about doing that. And so if you're going to ask for any of those, you got to go through the CENTCOM Commander and up to JCS and OSD to get approval from there.¹⁵²¹

¹⁵¹³ Ibid.

¹⁵¹⁴ Ibid.

¹⁵¹⁵ Ibid. at 21.

¹⁵¹⁶ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 71.

¹⁵¹⁷ Ibid.

¹⁵¹⁸ Ibid. at 73.

¹⁵¹⁹ Ibid. at 69.

¹⁵²⁰ Ibid.

¹⁵²¹ Ibid.

[REDACTED]

[REDACTED]

(U) LTG Sanchez said that he instructed his SJA to develop an interrogation policy, the "key purpose" of which was to "unequivocally establish as policy adherence to the Geneva Convention and to regulate approach techniques that we believed were derived from multiple sources" including the Army Field Manual, and techniques used in Guantanamo Bay and Afghanistan.¹⁵²²

(U) LTC Beaver said that she left the April 16, 2003 memo from Secretary Rumsfeld with the CJTF-7 legal staff. She also said that she told COL Marc Warren, the CJTF-7 SJA, and other lawyers on the CJTF-7 staff that while the policy had worked at Guantanamo, that CJTF-7 "would need to evaluate what was permissible in Iraq and what the command thought would work in this environment."¹⁵²³

(U) According to COL Pappas, CJTF-7 began drafting an interrogation policy while MG Miller and his assessment team were still in Iraq.¹⁵²⁴ He said that LTC Beaver, and several CJTF-7 lawyers worked on a memo at Camp Victory. MG Miller said that, while he did not know who actually drafted the memo, LTC Beaver told him that she worked on the issue with COL Warren and his staff.¹⁵²⁵ LTC Beaver did not recall working on an interrogation policy during the assessment visit.¹⁵²⁶

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

[REDACTED] At the conclusion of the assessment trip, MG Miller produced a trip report that described the team's findings.¹⁵²⁷ The trip report echoed what the JTF-GTMO Commander had told LTG Sanchez and MG Fast with regard to interrogation guidelines. The report stated "the team observed that the Task Force [CJTF-7] did not have authorities and procedures in place to affect a unified strategy to detain, interrogate, and report information from detainees/internees in Iraq."¹⁵²⁸ While the report did not discuss specific interrogation approaches or techniques, it did recommend ways in which the CJTF could improve the interrogation process:

Interrogations are [being] conducted without a clear strategy for implementing a long-term approach strategy and clearly defined interrogation policies and authorities. To achieve rapid exploitation of internees it is necessary to integrate detention operations, interrogation operations, and collection management under one command authority.¹⁵²⁹

¹⁵²² Statement of LTG Ricardo Sanchez (October 2004) at 7.

¹⁵²³ Sworn Statement of LTC Diane Beaver (December 10, 2004) at 5.

¹⁵²⁴ Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹⁵²⁵ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁵²⁶ Committee staff interview of LTC Diane Beaver (November 9, 2007).

¹⁵²⁷ Miller Report

¹⁵²⁸ Ibid. at 2.

¹⁵²⁹ Ibid. at 4.

[REDACTED]

(U) Subsequent to the assessment trip, six GTMO personnel – three interrogators and three analysts – were sent to Abu Ghraib to assist in implementing the GTMO recommendations and in establishing a Joint Intelligence and Debriefing Center.¹⁵³⁰

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

(U) MG Miller presented his trip report to SOUTHCOM and was subsequently told that it was forwarded to the Joint Staff and OSD.¹⁵³¹ He was subsequently directed to brief senior Department of Defense officials on his assessment visit and the report. MG Miller told the Army Inspector General (IG) that the briefing took place in October and was attended by Deputy Secretary of Defense Paul Wolfowitz, Under Secretary of Defense for Intelligence Steven Cambone, as well as senior military officers including LTG Ronald Burgess, the Director for Intelligence at the Joint Staff. According to MG Miller, his briefing covered “the ability of the CJTF-7 to be able to execute the strategic interrogation mission to develop intelligence, actual intelligence and an assessment of CJTF-7’s ability to detain civilian detainees in accordance with the Geneva Convention and AR190-8.”¹⁵³² Following the briefing, the GTMO Commander met privately with Deputy Secretary Wolfowitz and Under Secretary Cambone.¹⁵³³

(U) While MG Miller said that Under Secretary Cambone attended the briefing, Under Secretary Cambone testified on May 11, 2004 before the Senate Armed Services Committee that he was, in fact “not briefed” by the GTMO Commander on the trip report.¹⁵³⁴ In his written answer to a question for the record following his testimony, Under Secretary Cambone stated that, in fact, he “was never officially briefed on MG Miller’s report.”¹⁵³⁵ Just over a week after Under Secretary Cambone’s testimony, MG Miller testified before the Committee that he had “no direct discussions” with Under Secretary Cambone following his visit to Iraq.¹⁵³⁶

(U) In August 2004, however, MG Miller told Army Investigators that, following his return from Iraq he “gave an outbrief to both Dr. Wolfowitz and Secretary Cambone.”¹⁵³⁷ The GTMO Commander went on to state “the meeting that I had with Secretary Cambone had occurred after I returned... The discussion generally was about how we could improve the flow of intelligence from Iraq through and in interrogations.”¹⁵³⁸

¹⁵³⁰ *Fay Report* at 59.

¹⁵³¹ Army IG, Interview of MG Geoffrey Miller (June 28, 2005) at 5, 8.

¹⁵³² *Ibid.* at 4.

¹⁵³³ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 82.

¹⁵³⁴ *Allegations of Mistreatment of Iraqi Prisoners*, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 11, 2004) at 339.

¹⁵³⁵ *Ibid.* at 371.

¹⁵³⁶ *Allegations of Mistreatment of Iraqi Prisoners*, Senate Committee on Armed Services, 108th Congress, S. Hrg. 108-868 (May 19, 2004) at 594.

¹⁵³⁷ Interview of MG Geoffrey Miller for Javal Davis trial (August 21, 2004) at 3.

¹⁵³⁸ *Ibid.*

[REDACTED]

[REDACTED]

(U) More than a year later, in October 2005, the Army IG asked MG Miller about his testimony to the Committee that he had not had "direct discussions" with Under Secretary Cambone. Despite previously describing a "discussion" with Under Secretary Cambone, MG Miller told the IG that when asked at [the Senate Armed Services Committee] about discussions with Under Secretary Cambone after his trip, "I said no because I didn't have discussions with Cambone."¹⁵³⁹ MG Miller also told the Army IG that he didn't even know that the person attending the meeting was Dr. Cambone until Deputy Secretary Wolfowitz used his name.¹⁵⁴⁰ The Army IG also asked MG Miller about the smaller meeting that he attended with Deputy Secretary Wolfowitz and Under Secretary Cambone immediately following his briefing. MG Miller said that the reason for the smaller meeting was so that he could give the "unvarnished truth" about his visit and said that he told Deputy Secretary Wolfowitz and Under Secretary Cambone during that smaller meeting that CJTF-7 was at risk for "mission failure."¹⁵⁴¹

(U) Under Secretary Cambone stated in December 2006 that his records indicated that he "did attend MG Miller's briefing to Deputy Secretary Wolfowitz," but that he did "not remember participating in any substantive discussions." Under Secretary Cambone said that he had "no personal recollection" of the smaller meeting that took place subsequent to MG Miller's briefing.¹⁵⁴²

(U) During his December 20, 2007 interview with Committee staff, MG Miller said that he did not learn that Under Secretary Cambone was in attendance at the briefing until someone referred to him by name either during or after his briefing.¹⁵⁴³ He stated that, when he was asked at the May 2004 Committee hearing about discussions with Under Secretary Cambone, he had forgotten that Under Secretary Cambone had actually attended the briefing. MG Miller said his use of the word "discussion" in his August 2004 testimony to describe his interaction with Under Secretary Cambone was an imprecise use of words. MG Miller stated that, in the smaller meeting he attended following his briefing with Deputy Secretary Wolfowitz and Under Secretary Cambone, that Deputy Secretary Wolfowitz simply thanked him for his work.

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

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

(U) On September 14, 2003, less than a week after MG Miller's team left Iraq, LTG Sanchez issued the first CJTF-7 "Interrogation and Counter-Resistance Policy." The September 14, 2003 policy stated that the Geneva Conventions were applicable in Iraq and that Coalition Forces "will continue to treat all persons under their control humanely."¹⁵⁴⁴ LTG Sanchez stated

¹⁵³⁹ Army IG, Interview of MG Geoffrey Miller (October 20, 2005) at 79.

¹⁵⁴⁰ Ibid.

¹⁵⁴¹ Ibid. at 82.

¹⁵⁴² Letter from Under Secretary Stephen Cambone to Senator John Warner (December 19, 2006).

¹⁵⁴³ Committee staff interview of MG Geoffrey Miller (December 6, 2007).

¹⁵⁴⁴ CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

[REDACTED]

that he issued the policy because FM 34-52 left the "universe of approaches to the imagination of the interrogator" and demanded additional structure.¹⁵⁴⁵

(U) According to LTG Sanchez, the September 14, 2003 policy "drew heavily" on the Secretary of Defense's April 16, 2003 guidance for GTMO.¹⁵⁴⁶ Indeed, the September 14, 2003 policy included all 24 interrogation techniques that were in that guidance, as well as techniques that CPT Wood had copied from the SMU TF in Iraq's interrogation policy and submitted for approval. The latter included the presence of military working dogs, stress positions, sleep management, loud music, and light control.¹⁵⁴⁷ The techniques CPT Wood had copied from the SMU TF policy had, in turn, been based on techniques included in the interrogation policy used by the SMU TF in Afghanistan. That policy was influenced, in turn, by the Secretary of Defense's December 2, 2002 approval of aggressive interrogation techniques for use at GTMO.¹⁵⁴⁸

(U) Although some of the techniques authorized by the September 14, 2003 CJTF-7 policy required the CJTF-7 Commander's approval before they could be used on Enemy Prisoners of War (EPWs), LTG Sanchez stated that "with few exceptions, persons captured after May 1, 2003 were not entitled to EPW status as a matter of law."¹⁵⁴⁹ CPT Wood said that, to her knowledge, there were no EPWs held at Abu Ghraib.¹⁵⁵⁰

(U) LTG Sanchez stated that CJTF-7 forwarded the September 14, 2003 policy to CENTCOM with a cover memorandum stating that the policy was based on that used at Guantanamo Bay, but "modified for applicability to a theater of war in which the Geneva Conventions apply."¹⁵⁵¹ LTG Sanchez stated that his intent, unless otherwise directed, was to "immediately implement the policy outlined in the memo."¹⁵⁵²

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

(U) The September 14, 2003 policy went into effect for interrogators at Abu Ghraib as soon as it was issued. CPT Wood stated that she briefed the new policy for all of the [number

¹⁵⁴⁵ Statement of LTG Ricardo Sanchez (October 2004) at 9, 12.

¹⁵⁴⁶ Ibid. at 8.

¹⁵⁴⁷ The September 14, 2003 CJTF-7 Interrogation and Counter-Resistance Policy did not include sensory deprivation, which was also included in CPT Wood's August 27, 2003 policy proposal. CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Alpha Company, 519th MI BN SFIF Interrogation TTPS (August 27, 2003).

¹⁵⁴⁸ The September 14, 2003 policy also included "Mutt and Jeff," which was part of the 1987 version of Army FM 34-52, but not the 1992 version of the Army Field Manual 34-52. CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

¹⁵⁴⁹ CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Statement of LTG Ricardo Sanchez (October 2004) at 8.

¹⁵⁵⁰ Statement of CPT Carolyn Wood (December 17, 2004) at 4.

¹⁵⁵¹ Statement of LTG Ricardo Sanchez (October 2004) at 8, 12.

¹⁵⁵² Ibid.

[REDACTED]

of] interrogators and analysts working for her. She stated that during the briefing, "the interrogators took turns reading [the September 14 policy] line by line aloud."¹⁵⁵³ She stated that each interrogator present signed a document noting that he or she had received training on the policy. CPT Wood said that personnel who arrived at Abu Ghraib after CJTF-7 issued the policy were briefed on it during in-processing.

(U) CPT Wood also developed a Memorandum for Record on CJTF-7 Interrogation Rules of Engagement (IROE) to be signed by all personnel at Abu Ghraib in contact with detainees.¹⁵⁵⁴ The IROE stated that the interrogation approaches specified in Army FM 34-52, as well as yelling, light control, loud music, deception, and false flag were "approved for all detainees, regardless of status (security detainees, civilian internees, or EPWs)."¹⁵⁵⁵ Use of other approaches authorized by the September 14, 2003 CJTF-7 memorandum, including stress positions, presence of dogs, dietary manipulation, environmental manipulation, sleep adjustment, and sleep management, were to be approved by the interrogation officer in charge or the non-commissioned officer in charge.

(U) At least one version of the IROE used a September 10, 2003 CJTF-7 draft policy as its basis, rather than the September 14 approved policy.¹⁵⁵⁶ That IROE also listed sensory deprivation as "approved in accordance with the CJTF-7 policy."¹⁵⁵⁷ While CPT Wood had requested sensory deprivation and the technique had been included in a September 10, 2003 draft policy, it was not among those listed in the September 14, 2003 policy approved by CJTF-7. CPT Wood acknowledged that she may have used the wrong policy as a basis for her IROE.¹⁵⁵⁸

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

(U) LTG Sanchez said that when he issued the September 14, 2003 policy, there was agreement in the CJTF-7 legal community that the techniques in the policy were lawful. He said that that consensus was developed in the absence of guidance from CENTCOM, who he said believed the issue was too contentious and would not give CJTF-7 legal guidance.¹⁵⁵⁹ LTG Sanchez said that "time was of the essence" so he "decided to publish the September memorandum knowing that discussions were ongoing as to the legality of some of the approaches included in the memorandum."¹⁵⁶⁰

¹⁵⁵³ Statement of CPT Carolyn Wood (December 17, 2004) at 4.

¹⁵⁵⁴ Memorandum for Record, *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003) (hereinafter "*CJTF-7 Interrogation Rules of Engagement* (October 9, 2003)").

¹⁵⁵⁵ *Ibid.*

¹⁵⁵⁶ *CJTF-7 Interrogation and Counter-Resistance Policy* (September 10, 2003).

¹⁵⁵⁷ *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

¹⁵⁵⁸ Committee staff interview of CPT Carolyn Wood (February 11, 2008); *CJTF-7 Interrogation and Counter-Resistance Policy* (September 10, 2003).

¹⁵⁵⁹ Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹⁵⁶⁰ *Ibid.*; Statement of LTG Ricardo Sanchez (October 2004) at 8, 12.

[REDACTED] LTG Sanchez stated that when the September 14, 2003 policy reached CENTCOM, it "energized the legal community there and that COL Fred Pribble [the CENTCOM SJA] had concerns."¹⁵⁶¹ LTG Sanchez said that CENTCOM lawyers thought some techniques in the September 14 policy came too close to the boundary.¹⁵⁶² COL Marc Warren, the CJTF-7 SJA, stated that the CENTCOM SJA "raised concerns to us that the policy was objectionable in that aspects of the approved approaches were impermissibly coercive."¹⁵⁶³

[REDACTED] On September 15, 2003, the day after the policy was issued, COL Warren sent a copy to COL Pribble and William "Barry" Hammill, CENTCOM's Deputy SJA, stating "this is pretty tame stuff, largely a direct lift from the Army Interrogation FM. The genesis of this product was the visit by MG Miller's GITMO team."¹⁵⁶⁴ The next day, Mr. Hammill asked Major Carrie Ricci, the Chief of International Law at CENTCOM to review the policy.¹⁵⁶⁵ That same day, MAJ Ricci responded in an email stating that "Many of the techniques appear to violate [Geneva Convention] III and IV and should not be used on [enemy prisoners of war] or [civilian internees]. The [Geneva Conventions] prohibits all coercive interrogation techniques."¹⁵⁶⁶

[REDACTED] On September 17, 2003, COL Pribble sent a copy of MAJ Ricci's email to COL Warren who responded that "almost all of these techniques are right out of the Field Manual and are in use now."¹⁵⁶⁷ That same day, MAJ Ricci responded:

Gentlemen, it's the techniques that are not in the field manual that concern me. Techniques such as dietary manipulation, environmental manipulation, sleep adjustment, sleep management, yelling, loud music, light control, stress positions, etc. many of these techniques appear to violate [Geneva Convention] III, Article 17: "No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."

... My recommendation is that the interrogation policy be kept in conformity with the [Field Manual] ... I would hesitate to put in writing how we are directing interrogations beyond what is in the [Field Manual]. If CJTF-7 wants to take advantage of the additional measures used at Guantanamo, this should be limited to detainees who are not entitled to [Geneva Convention] protections or else I

¹⁵⁶¹ Statement of LTG Ricardo Sanchez (November 23, 2004) at 4.

¹⁵⁶² Committee staff interview of LTG Ricardo Sanchez (December 20, 2007).

¹⁵⁶³ COL Mark Warren, Judge Advocate Interview Questions (June 25, 2004).

¹⁵⁶⁴ Email from COL Marc Warren to COL Fred Pribble and William Hammill (September 15, 2003).

¹⁵⁶⁵ Email from William Hammill to MAJ Carrie Ricci (September 16, 2003).

¹⁵⁶⁶ Email from MAJ Carrie Ricci to William Hammill (September 16, 2003).

¹⁵⁶⁷ Email from COL Marc Warren to COL Fred Pribble, MAJ Carrie Ricci, and William Hammill (September 17, 2003).

[REDACTED]

believe we should still seek SECDEF approval – and I am doubtful some of these techniques will be approved. The policy as written is troublesome.¹⁵⁶⁸

[REDACTED] Later that day, MAJ Ricci spoke with COL Warren by phone.¹⁵⁶⁹ In a subsequent email to Mr. Hammill she said that COL Warren was “going to try and re-work the policy. He is understandably unhappy that the policy was already signed by the [Commanding General] and now the SJA has the regrettable task of telling the [Commanding General] the policy has problems – but that’s what we get paid for.”¹⁵⁷⁰

[REDACTED] In a September 22, 2003 email to MAJ Ricci, CENTCOM SJA COL Fred Pribble said “During my sitdown with COL Warren in Baghdad, he was pretty quick to admit that we (read you) had made the right call and that they would scrub the policy.”¹⁵⁷¹

[REDACTED] LTG Sanchez said that after CJTF-7 and CENTCOM lawyers began to debate the policy that he and COL Warren again reviewed the memo. LTG Sanchez stated that COL Warren told him:

“Yes, they are legal. There is some dissent and different opinions within the legal community. Some of these may be harsher than others, and in order for us to eliminate debate and get consensus, we probably ought to put some of these aside, and oh, by the way, they probably wouldn’t get us too much anyway if we implemented them.” I said “Okay, fine let’s get consensus. Go ahead and constrain it (the September policy).”¹⁵⁷²

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

(U) On October 12, 2003, nearly a month after MAJ Ricci’s concerns were brought to COL Warren’s attention, LTG Sanchez issued a revised interrogation policy, eliminating all techniques not listed in either the 1987 or 1992 versions of the Army Field manual. Techniques removed from the list of authorized techniques included dietary manipulation, environmental manipulation, sleep adjustment, false flag, presence of military working dogs, sleep management, stress positions, and yelling, loud music, and light control.¹⁵⁷³ CJTF-7 also removed isolation and added “segregation” to the new policy. The October 12, 2003 policy

¹⁵⁶⁸ Email from MAJ Carrie Ricci to COL Marc Warren, COL Fred Pribble, and William Hammill (September 16, 2003).

¹⁵⁶⁹ Email from MAJ Carrie Ricci to William Hammill (September 17, 2003).

¹⁵⁷⁰ Ibid.

¹⁵⁷¹ Email from COL Fred Pribble to MAJ Carrie Ricci and William Hammill (September 22, 2003).

¹⁵⁷² Statement of LTG Ricardo Sanchez (November 23, 2004) at 4.

¹⁵⁷³ The October 12, 2003 policy also eliminated two Army FM techniques – change of scenery up and change of scenery down. CJTF-7 Memorandum for C2, Combined Joint Task Force Seven, C3, Combined Joint Task Force Seven, Commander, 205th Military Intelligence Brigade, *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003) (hereinafter “*CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003)”).

[REDACTED]

stated that the CJTF-7 Commanding General had to approve segregation in all cases exceeding "30 days in duration, whether consecutive or nonconsecutive."¹⁵⁷⁴

(U) CJTF-7 removed "the presence of military dogs" from the list of interrogation techniques in the October 12, 2003 policy, but added a line in the "General Safeguards" section of the policy stating that "Should working dogs be present during interrogations, they will be muzzled and under the control of a handler at all times to ensure safety."¹⁵⁷⁵ Despite references to dogs in both the September 14, 2003 interrogation policy and the October 12, 2003 interrogation policy, LTG Sanchez said that the "intent for the use of dogs was always focused on the security contributions they make in a detention facility" and that there was "no explicit direction, guidance, or condoning of the use of *unmuzzled* dogs in the conduct of interrogations."¹⁵⁷⁶ LTG Sanchez acknowledged that placement of "presence of military working dogs" in the interrogation techniques section of the September 14 policy was "confusing."¹⁵⁷⁷ He said that he removed the "presence of military working dogs" from the list of interrogation techniques in the October policy and put it in the general safeguards section to make it "clear that using dogs for the deliberate purpose of frightening a detainee was not permitted."¹⁵⁷⁸

(U) LTG Sanchez stated that "It is certainly clear under the October 2003 policy that the use of military working dogs in interrogations would require an exception to policy granted by me."¹⁵⁷⁹ COL Pappas stated, however, that he believed that the October 12, 2003 interrogation policy "delegated to me the authority to approve the use of muzzled dogs."¹⁵⁸⁰

(U) The October 12, 2003 policy also stated that requests to use interrogation approaches not listed in the policy "will be submitted to [the CJTF-7 Commander] through CJTF-7 [Director for Intelligence] and will include a description of the proposed approach and recommended safeguards."¹⁵⁸¹

(U) CPT Wood at Abu Ghraib said that when the October 12, 2003 policy was issued, her interrogators signed a new Interrogation Rules of Engagement Memorandum (IROE).¹⁵⁸² The new IROE listed all of the techniques identified in the October 12, 2003 policy and stated that they were "approved for all detainees, regardless of status."¹⁵⁸³ The IROE also listed approaches

¹⁵⁷⁴ *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003).

¹⁵⁷⁵ *Ibid.*

¹⁵⁷⁶ Statement of LTG Ricardo Sanchez (October 2004) at 21; Statement of LTG Ricardo Sanchez (November 23, 2004) at 3 (emphasis added).

¹⁵⁷⁷ Statement of LTG Ricardo Sanchez (November 23, 2004) at 4, 5.

¹⁵⁷⁸ *Ibid.*

¹⁵⁷⁹ Statement of LTG Ricardo Sanchez (October 2004) at 21.

¹⁵⁸⁰ Army IG, Interview of COL Thomas Pappas (April 12, 2006) at 27.

¹⁵⁸¹ *CJTF-7 Interrogation and Counter-Resistance Policy* (October 12, 2003).

¹⁵⁸² Statement of CPT Carolyn Wood (December 17, 2004) at 4.

¹⁵⁸³ Memorandum for Record *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

[REDACTED]

not explicitly approved in the October 12, 2003 policy, but which had to be requested through the Interrogation Officer in Charge to the CJTF-7 Commanding General. The IROE listed nine examples of such techniques, presence of military working dogs, stress positions, sensory deprivation, dietary manipulation, environmental manipulation, sleep adjustment, isolation, sleep management, and change of scenery down.¹⁵⁸⁴

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

[REDACTED] On October 16, 2003, a new Commander, [REDACTED] took command of the SMU TF. [REDACTED] stated that he "used his subject matter experts to build the [interrogation] SOP consistent with existing rules and regulations."¹⁵⁸⁵ This SOP went into effect on October 25, 2003. The Department of Defense has not provided the Committee with a copy of the October 25, 2003 SMU TF SOP.¹⁵⁸⁶

[REDACTED] According to the Church Special Focus Team Report, however, the October 25, 2003 SMU TF policy included ten interrogation techniques not listed in the Army Field Manual.¹⁵⁸⁷ Those techniques included controlled fear (muzzled dogs), stress positions, sleep deprivation/adjustment, environmental manipulation, yelling, loud music, and light control, removal of comfort items, isolation, false documents/report, multiple interrogator, and repeat and control.¹⁵⁸⁸ Less than two weeks before the policy was finalized, several of these techniques, including environmental manipulation, stress positions, muzzled dogs, and sleep adjustment – had been removed from CJTF-7's interrogation SOP after CENTCOM raised legal concerns about them.¹⁵⁸⁹

¹⁵⁸⁴ Ibid.

¹⁵⁸⁵ [REDACTED] Questionnaire (June 29, 2004) at 2.

¹⁵⁸⁶ [REDACTED] The Department of Defense produced two documents to the Committee in response to the request for the October SOP. Neither of those two documents is dated and one appears to be a draft written sometime after December 18, 2003. See Department of Defense Headquarters, Joint Task Force [REDACTED] Baghdad Airbase, Iraq, [REDACTED] Battlefield Interrogation Facility/Team Standing Operating Procedures; Department of Defense Headquarters, Joint Task Force [REDACTED] Baghdad Airbase, Iraq, [REDACTED] Battlefield Interrogation Team and temporary Facility Standing Operating Procedures. The Department stated in a March 10, 2008 letter that the documents provided in response to the Committee's request for the October 25, 2003 SOP were "reasonably close to the time frame and location requested." Letter from ASD Robert Wilkie to Chairman Carl Levin (March 10, 2008). The Department has also informed the Committee that after "multiple searches we were unable to locate an SOP with the exact October 25, 2003 date." Email from Thomas Alexander to Committee staff (April 9, 2008).

¹⁵⁸⁷ Church Special Focus Team Report at 12-13.

¹⁵⁸⁸ [REDACTED] Although the Church Special Focus Team Report identified "repeat and control" as a technique that went beyond the Army FM, it could also arguably be classified as a Field Manual technique.

¹⁵⁸⁹ CJTF-7's September 14, 2003 SOP included "sleep management" and "sleep adjustment." See Section XII E, *supra*.

[REDACTED]

[REDACTED] Despite having been included in the October 25, 2003 SMU TF policy, which he approved, [REDACTED] indicated to DoD investigators in June 2004 that he had not approved "environmental manipulation" or "presence of military working dogs."¹⁵⁹⁰

[REDACTED] There is evidence that at least one technique that was not in the SOP – removal of clothing – was in use at the SMU TF in late 2003. [REDACTED] stated that when he took command in October 2003, he "discovered that some of the detainees were not allowed clothes" as an interrogation technique [REDACTED]¹⁵⁹¹ He said that he did not know where the technique came from.¹⁵⁹² Weeks prior to his October 2003 arrival, however, JPRA instructors had stripped a detainee during their assistance visit to the SMU TF facility as part of an interrogation.¹⁵⁹³ Terrence Russell, the JPRA training manager who was part of the JPRA team of instructors at the SMU TF, said that the detainee was stripped [REDACTED]¹⁵⁹⁴ Mr. Russell stated that [REDACTED]¹⁵⁹⁵ "we've done this 100 times, 1000 times with our [SERE school] students."

[REDACTED] stated that he was "uncomfortable" with stripping detainees and that "stripping a detainee just didn't seem right to [him] even though arguably, it was an effective technique."¹⁵⁹⁶ He said he terminated the practice in December 2003 or January 2004.

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

(U) Between September and December 2003, military personnel at Abu Ghraib engaged in what Major General Antonio Taguba would later call "numerous incidents of sadistic, blatant, and wanton criminal abuses" of detainees.¹⁵⁹⁷ Several instances of abuse were captured in photographs taken by the soldiers themselves and, in April 2004, some of those photographs appeared in the media.

(U) Two Army investigations, one conducted by MG Taguba and the other conducted by Major General George Fay would later find that abuses at Abu Ghraib were perpetrated directly by both military police (MP) and military intelligence (MI) personnel.¹⁵⁹⁸ In addition to the direct participation of MI personnel in incidents of detainee abuse, MG Fay's investigation also identified situations where MI personnel solicited MPs to engage in detainee abuse, using such

¹⁵⁹⁰ [REDACTED] Questionnaire (June 29, 2004) at 4.

¹⁵⁹¹ Church Special Focus Team Report at 13; [REDACTED] Questionnaire (June 29, 2004) at 3.

¹⁵⁹² [REDACTED] Questionnaire (June 29, 2004) at 3.

¹⁵⁹³ Testimony of Terrence Russell (August 3, 2007) at 117.

¹⁵⁹⁴ Ibid.

¹⁵⁹⁵ Ibid.

¹⁵⁹⁶ [REDACTED] Questionnaire (June 29, 2004) at 3.

¹⁵⁹⁷ MG Antonio Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* (hereinafter "Taguba Report") at 16.

¹⁵⁹⁸ Taguba Report at 16-17; Fay Report at 7.

[REDACTED]

methods as "isolation with sensory deprivation, removal of clothing and humiliation, [and] the use of dogs as an interrogation tool to induce fear, and physical abuse."¹⁵⁹⁹

(U) MG Fay cited the inadequacy of interrogation doctrine as a "contributing factor" to Abu Ghraib and stated that interrogation techniques developed and approved for use at GTMO and in Afghanistan became "confused" at Abu Ghraib and "were implemented without proper authorities or safeguards."¹⁶⁰⁰ As discussed above, some of the techniques MG Fay found to be abusive were also authorized for use by military interrogators conducting interrogations at the SMU TF facility in Iraq.

(U) Interviews conducted by investigators for both MG Fay and MG Taguba contain evidence that the use of aggressive interrogation techniques like use of military working dogs, stress positions, and removal of clothing, was not limited to the specific incidents described in those reports. In fact, those interviews appear to indicate that the use of some of these techniques was widespread at Abu Ghraib.

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

(U) The use of military working dogs to exploit detainee fears was authorized on December 2, 2002 by the Secretary of Defense for use at Guantanamo Bay.¹⁶⁰¹ Weeks later, the technique appeared in a January 24, 2003 memorandum from CJTF-180's Deputy Staff Judge Advocate (SJA) and was subsequently considered available for use in Afghanistan.¹⁶⁰² The use of dogs was also among those techniques authorized for use at the SMU TF in Iraq.¹⁶⁰³

[REDACTED] Following MG Miller's assistance visit to Iraq in August and September 2003, CJTF-7 had submitted a request for three military police dog teams "to provide an increased security posture" to support detention and interrogation operations at Abu Ghraib.¹⁶⁰⁴

(U) The dog teams arrived at Abu Ghraib on November 20, 2003.¹⁶⁰⁵ According to MG Fay's report, "abusing detainees with dogs started almost immediately after the dogs arrived" with the first incident occurring on November 24, 2003.¹⁶⁰⁶ Major General Fay's report documented seven other times over the next six weeks when dogs were used, including three occasions in which they were used in interrogations, one occasion the report referred to as "an

¹⁵⁹⁹ Fay Report at 7.

¹⁶⁰⁰ Ibid. at 8.

¹⁶⁰¹ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

¹⁶⁰² Fay Report at 83; Church Report at 7.

¹⁶⁰³ DoD IG Report at 16.

¹⁶⁰⁴ See Deployment Order 231, referencing U.S. CENTCOM October 9, 2003 request for forces.

¹⁶⁰⁵ Fay Report at 83.

¹⁶⁰⁶ Ibid.

[REDACTED]

apparent [Military Intelligence] directed use of dogs in detainee abuse," and one incident described as dogs being used likely as a "softening up" technique for future interrogations."¹⁶⁰⁷

[REDACTED] COL Pappas, the Commander of the 205th MI BDE, said that on December 12, 2003 he "specifically approved the dogs to be used."¹⁶⁰⁸ A December 14, 2003 memo for LTG Sanchez, the CJTF-7 Commander, signed by COL Pappas indicated that COL Pappas approved the "presence of military working dogs" for three detainees captured in conjunction with Saddam Hussein.¹⁶⁰⁹ COL Pappas stated that he "couldn't say for sure" whether he actually sent the memo to LTG Sanchez, but that he "signed it with the intent of it going to him."¹⁶¹⁰ LTG Sanchez said that no request for the use of dogs in interrogations "was ever received or approved by me."¹⁶¹¹

(U) One intelligence analyst stated that it was "common knowledge" that one soldier used "dogs while he was on his special projects" working directly for COL Pappas after the capture of Saddam Hussein."¹⁶¹² And an MP said that dogs could be used in interrogations "with the proper authorization," and that "dogs were used to scare the detainee into confessing or producing intelligence."¹⁶¹³

(U) An Army dog handler said that "MI would ask me to use my dog as a psychological and physical deterrent. It would consist of a dog walking up to a prisoner and the dog barking at a prisoner."¹⁶¹⁴ The same dog handler said that "Someone from MI gave me a list of cells, for me to go see, and pretty much have my dog bark at them... Having the dogs bark at detainees was psychologically breaking them down for interrogation purposes."¹⁶¹⁵

(U) On February 19, 2004, after MG Taguba had begun his investigation into the abuses at Abu Ghraib, the Commander of the 504th MI Brigade issued a memorandum stating that "military working dogs will not be present during the interrogation or debriefing of any detainees at the Abu Ghraib facility."¹⁶¹⁶

¹⁶⁰⁷ Ibid. at 85-87.

¹⁶⁰⁸ Sworn statement of COL Thomas Pappas (January 25, 2006) at 7.

¹⁶⁰⁹ Memorandum from COL Thomas Pappas for LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

¹⁶¹⁰ Sworn statement of COL Thomas Pappas (January 25, 2006) at 9.

¹⁶¹¹ Statement of LTG Ricardo Sanchez (October 2004) at 21.

¹⁶¹² Statement of Intelligence Analyst (May 25, 2004).

¹⁶¹³ Statement of 504th MI BN soldier (June 4, 2004).

¹⁶¹⁴ Statement of Army dog handler (undated).

¹⁶¹⁵ Interview of Army dog handler (February 13, 2004).

¹⁶¹⁶ Memo from COL Foster P Payne II for Joint Interrogation and Debriefing Center, *Suspension of Use of Military Working Dogs* (February 19, 2004).

[REDACTED]

B. Stress Positions and Physical Training (U)

(U) Stress positions were authorized for use in interrogations at GTMO by the Secretary of Defense on December 2, 2002.¹⁶¹⁷ The technique was used in interrogations in Afghanistan in 2002 and 2003.¹⁶¹⁸ Stress positions were also authorized for use at the SMU TF in Iraq.¹⁶¹⁹

(U) CPT Wood at Abu Ghraib said that stress positions and forced exercise regimens (also called compulsory physical training) were used in interrogations and the September 14, 2003 CJTF-7 policy explicitly authorized the use of stress positions.¹⁶²⁰ CPT Wood's October 9, 2003 Interrogation Rules of Engagement (IROE) for interrogators listed stress positions as an approved technique.¹⁶²¹ While the October 12, 2003 CJTF-7 policy removed stress positions from the list of authorized interrogation techniques, a subsequent IROE for interrogators continued to list the technique, with the caveat that its use "must be approved by the [Commanding General], CJTF-7 prior to employment."¹⁶²²

(U) MG Fay's report stated that "What started as nakedness and humiliation, stress and physical training (exercise) carried over into sexual and physical assaults..."¹⁶²³ The report described one incident where a detainee was "forced to stand while handcuffed in such a way to dislocate his shoulder" and described a photograph of an interrogation being conducted while another detainee was squatting on a chair which MG Fay called "an unauthorized stress position."¹⁶²⁴

(U) One MP said he "saw MI use stress positions" at Abu Ghraib.¹⁶²⁵ Similarly, the warden of the Hard Site at Abu Ghraib stated that military intelligence made detainees engage in physical training and he saw "detainees holding buckets, arms out, and other drills."¹⁶²⁶ An MP Platoon leader stated that he also "observed [military intelligence personnel] making detainees do physical training."¹⁶²⁷

¹⁶¹⁷ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

¹⁶¹⁸ U.S. Army Criminal Investigation Command Bagram Branch Office Memo, *CID Report of Investigation - FINAL -0134-02-CID36923533* (October 8, 2004).

¹⁶¹⁹ DoD IG Report at 16.

¹⁶²⁰ CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003); Army IG; Interview of CPT Carolyn Wood (August 15, 2006) at 30.

¹⁶²¹ CJTF-7 Interrogation Rules of Engagement (October 9, 2003).

¹⁶²² CJTF-7 Interrogation and Counter-Resistance Policy (October 12, 2003); CJTF-7 Interrogation Rules of Engagement (October 16, 2003).

¹⁶²³ Fay Report at 10.

¹⁶²⁴ Ibid. at 68, 82.

¹⁶²⁵ Statement of MP soldier (June 6, 2004).

¹⁶²⁶ Interview of MP Company Commander (February 21, 2004).

¹⁶²⁷ Interview of MP Platoon leader (June 6, 2004).

[REDACTED]

(U) When asked whether he had ever been directed by MI or another government agency (OGA) to "soften up" a prisoner, one MP said "Yes, I would have them do physical training to tire them out."¹⁶²⁸ Another MP stated that military intelligence personnel insinuated that MP soldiers should abuse detainees telling them to "'Loosen this guy up for us.' 'Make sure he has a bad night.' 'Make sure he gets the treatment.'"¹⁶²⁹

(U) One interrogator confirmed the practice of having MPs "soften up" detainees, stating that the "MPs did prepare prisoners prior to interrogations by having them do physical exercises and yelling at them. The interrogators would verbally discuss, with an MP, a detainee and his cooperativeness and various methods to deal with a detainee such as physical exercise at random hours of the night and yelling."¹⁶³⁰ Other MI soldiers confirmed the use of stress positions by interrogators at Abu Ghraib. One interrogation analyst stated that he witnessed the use of a stress position where a detainee was "handcuffed to the floor."¹⁶³¹ The same soldier referred to that use of the stress position as "in following with the interrogation plan."¹⁶³² An interrogator likewise stated that she "did use a stress position" in interrogations.¹⁶³³ Another interrogator who was deployed from GTMO to Abu Ghraib following the MG Miller assistance visit said that "stress positions were authorized" when he first got to Abu Ghraib in October 2003 and that he witnessed use of the technique.¹⁶³⁴

C. Removal of Clothing (U)

(U) Removal of clothing was authorized by the Secretary of Defense for use at GTMO on December 2, 2002.¹⁶³⁵ The technique was also recommended as an effective technique in a January 24, 2003 memo written by the CJTF-180 Deputy SJA and was subsequently considered approved policy in Afghanistan.¹⁶³⁶

[REDACTED] The Special Mission Unit (SMU) Task Force (TF) in Iraq also used "removal of clothing" as an interrogation technique in the fall of 2003, just as the Abu Ghraib abuses were taking place. While not included in the SMU TF interrogation SOP, the SMU TF Commander [REDACTED] stated that when he took command in October 2003 he "discovered that some of the detainees were not allowed clothes" as an interrogation technique [REDACTED]

¹⁶²⁸ Statement of MP soldier (January 17, 2004).

¹⁶²⁹ Statement of MP soldier (January 14, 2004).

¹⁶³⁰ Statement of MI soldier (January 21, 2004).

¹⁶³¹ Statement of 302nd MI BN soldier (May 11, 2004).

¹⁶³² Ibid.

¹⁶³³ Statement of MI soldier (June 4, 2004).

¹⁶³⁴ Statement of interrogator (June 4, 2004).

¹⁶³⁵ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

¹⁶³⁶ Fay Report at 88; Church Report at 7

[REDACTED] said he terminated the practice in December 2003 or January 2004.¹⁶³²

(U) Though it never appeared in CJTF-7's interrogation policy, MG Fay stated in his report that removal of clothing was "imported" to Abu Ghraib and could be "traced through Afghanistan and GTMO."¹⁶³⁹ MG Fay's report stated that removal of clothing was "used to humiliate detainees" and said the practice "contributed to an environment that would appear to condone depravity and degradation rather than the humane treatment of detainees."¹⁶⁴⁰ His report identified several specific incidents of detainees being stripped or partially stripped at the direction of interrogation personnel at Abu Ghraib.

(U) Statements by military police and military intelligence personnel who served at Abu Ghraib indicated that removal of clothing was widely used for interrogations. COL Jerry Philabaum, the Commander of the 320th MP BN at the facility, recalled seeing "between 12-15 detainees naked in their own individual cells."¹⁶⁴¹ He said that when he raised the issue with the JIDC Commander, LTC Steven Jordan, he was told it "was normal practice for detainees to be naked in their cells, but that usually they didn't have that many naked and that it was a technique [military intelligence] used."¹⁶⁴² CPT Donald Reese, the Commander of the 372nd MP Company, stated that LTC Jordan also told him that stripping detainees was "an interrogation method that we use."¹⁶⁴³ CPT Reese said the fact that detainees were naked as an interrogation method was "known by everybody" and stated that it was "common practice to walk the tier and see detainees without clothing and bedding."¹⁶⁴⁴

(U) Similarly, an intelligence analyst at Abu Ghraib stated that it was "common that the detainees on [military intelligence] hold in the hard site were initially kept naked and given clothing as an incentive to cooperate with us."¹⁶⁴⁵ One interrogator stated that "it was practice, especially for [military intelligence] holds to take their clothes in a possible attempt to renew the 'capture shock' of detainees who had been in custody for an extended period of time or were transferred from other facilities."¹⁶⁴⁶ Another interrogator said that "it was common to see

¹⁶³⁷ [REDACTED] Questionnaire (June 29 2004) at 3.

¹⁶³⁸ Ibid.

¹⁶³⁹ Fay Report at 87.

¹⁶⁴⁰ Ibid. at 70.

¹⁶⁴¹ Statement of Commander 320th MP BN (May 26, 2004).

¹⁶⁴² Ibid.

¹⁶⁴³ Statement of 372nd MP Company Commander (May 3, 2004); Interview of 372nd MP Company Commander (February 10, 2004) at 48.

¹⁶⁴⁴ Interview of 372nd MP Company Commander (February 10, 2004) at 48-49; Statement of 372nd MP Company Commander (February 21, 2004); Statement of 372nd MP Company Commander (January 18, 2004) at 1-2.

¹⁶⁴⁵ Statement of Intelligence Analyst (May 25, 2004).

¹⁶⁴⁶ Statement of MI soldier (June 15, 2004).

[REDACTED]

detainees in cells without clothes or naked" and said that it was "one of our approaches."¹⁶⁴⁷ The interrogator said that "any officer who would walk the area at night should have seen the detainees naked."¹⁶⁴⁸

(U) One military police (MP) soldier stated that MI "would tell us to take away [the detainees'] mattresses, sheets, and clothes" and that "the detainees would sleep in their cells naked."¹⁶⁴⁹ Another MP stated that MI used "clothing removal as an interrogation technique in Tier 1A."¹⁶⁵⁰ Major Michael Sheridan, who was Executive Officer of the 320th MP Battalion at Abu Ghraib, said that he stopped permitting MPs to escort detainees to interrogations after an incident where a male detainee "was being interrogated naked and then my MPs had to escort him back to his cell in 45 degree temps with nothing but a bag over his head, and one of the MPs was female."¹⁶⁵¹

(U) One Abu Ghraib interrogator stated that another interrogator who was deployed from GTMO to Abu Ghraib, told him that he "was permitted as the interrogator to strip a detainee completely naked in the interrogation booth."¹⁶⁵² Another GTMO interrogator deployed to Abu Ghraib said that he oversaw the interrogation of a detainee who had been stripped.¹⁶⁵³ The interrogator said that the technique was approved by a superior officer.¹⁶⁵⁴ A third interrogator who had previously served at GTMO recalled asking an MP at Abu Ghraib "to strip [a detainee] naked for us for the interrogation."¹⁶⁵⁵

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

(U) On December 2, 2002, the Secretary of Defense authorized the use of 20 hour interrogations at GTMO.¹⁶⁵⁶

[REDACTED] A January 24, 2003 memo from the CJTF-180 Deputy SJA stated that "sleep adjustment," which the memo described as "generally 4 hours of sleep per every 24 hours," was used as an interrogation technique in Afghanistan.¹⁶⁵⁷ The SMU TF interrogation policy for Iraq listed "sleep management" as an authorized technique and described the technique as "four hours

¹⁶⁴⁷ Unsigned interrogator statement (May 13, 2004). The statement was contained in a memorandum for the record which the interrogator declined to sign based on advice from counsel.

¹⁶⁴⁸ Ibid.

¹⁶⁴⁹ *Taguba Report* at 19; Article 32 Transcript U.S. v Davis (April 7, 2004) at 11.

¹⁶⁵⁰ Statement of MP soldier (June 6, 2004).

¹⁶⁵¹ Interview of Major Michael Sheridan (February 14, 2004) at 8.

¹⁶⁵² Statement of MI soldier (May 25, 2004).

¹⁶⁵³ Statement of MI soldier (June 4, 2004).

¹⁶⁵⁴ Ibid.

¹⁶⁵⁵ Statement of MI soldier (July 20, 2004).

¹⁶⁵⁶ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

¹⁶⁵⁷ Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4, 9.

[REDACTED]

of sleep during [a] 24 hour period" – the same way that CJTF-180 had described "sleep adjustment" in Afghanistan.¹⁶⁵⁸

(U) The September 14, 2003 CJTF-7 policy authorized both sleep management and sleep adjustment for interrogations, defining the former as "adjusting the sleep times of a detainee" and the latter as "4 hours of sleep per 24 hour period."¹⁶⁵⁹ CPT Wood's October 9, 2003 IROE also listed both "sleep adjustment" and "sleep management" as approved techniques.¹⁶⁶⁰ CJTF-7's October 12, 2003 policy did not include either sleep adjustment or sleep management as authorized interrogation techniques.¹⁶⁶¹ However, an October 16, 2003 IROE written by CPT Wood continued to list both techniques, saying that their use "must be approved by the [Commanding General], CJTF-7 prior to employment."¹⁶⁶²

(U) MG Fay's report stated that the "sleep adjustment" technique was used by [military intelligence] as soon as the Tier 1A block opened" at Abu Ghraib.¹⁶⁶³ Interviews of MI and MP soldiers, however, indicated a lack of clarity among MI and MP as to what "sleep adjustment," "sleep management," and "sleep deprivation" actually meant. In any case, MPs were integral to carrying out each of those techniques for MI personnel.

(U) One contract interrogator stated that "During a typical SMMP [sleep and meal management program], the MPs are responsible for administering the written program provided by the interrogator... In addition, the MPs are advised that during the awake time period of an approved SMMS program, the MPs are allowed to do what is necessary to keep the detainee awake in the allotted period of time as long as it adheres to approved rules of engagement and proper treatment of detainee."¹⁶⁶⁴ An MI non-commissioned officer stated that he provided sleep adjustment schedules included in interrogation plans written by interrogators he was supervising to the MP Sergeant of the Guard.¹⁶⁶⁵ Similarly, an intelligence analyst said that the process for using sleep management was "for the interrogator to request it in writing and submit the request with the interrogation plan... Once it was approved, a memo was given to the MPs showing the schedule."¹⁶⁶⁶

(U) COL Jerry Philabaum, the Commander of the 320th MP BN, said that "When [military intelligence] wanted a detainee on sleep deprivation, they would tell the MP guard that prisoner 'X' was on sleep deprivation. They would give instructions that the detainee was to

¹⁶⁵⁸ [REDACTED] Memorandum for all [REDACTED] Personnel, SUBJECT: Policy No. 1 – Battlefield Interrogation Team and facility (BIT/F) Policy (July 15, 2003).

¹⁶⁵⁹ CJTF-7 Interrogation and Counter-Resistance Policy (September 14, 2003).

¹⁶⁶⁰ CJTF-7 Interrogation Rules of Engagement (October 9, 2003).

¹⁶⁶¹ CJTF-7 Interrogation and Counter-Resistance Policy (October 12, 2003).

¹⁶⁶² CJTF-7 Interrogation Rules of Engagement (October 16, 2003).

¹⁶⁶³ Fay Report at 70.

¹⁶⁶⁴ Interview of contract interrogator (June 22, 2004).

¹⁶⁶⁵ Statement of non-commissioned officer (June 4, 2004).

¹⁶⁶⁶ Statement of Intelligence Analyst (May 25, 2004).

[REDACTED]

[REDACTED]

sleep four hours within a 24 hour period... I don't believe MPs were given specific instructions on how to keep the detainees awake. It was left to the MPs."¹⁶⁶⁷ Another MP Officer stated that:

When MI needed our assistance with detainees, they did their request through memorandums. The memorandums would dictate what MI wanted. The memorandums were signed by COL Pappas and given to the NCOIC [Non-Commissioned Officer in Charge] of the wing. The memorandums would give instructions on diet patterns, sleep patterns, music playing, and various other techniques that MI requested the MPs to carry out.¹⁶⁶⁸

An MP non-commissioned officer stated that "there was no SOP for sleep management."¹⁶⁶⁹ MG Fay stated that techniques used by MPs to keep detainees awake included stripping them and giving them cold showers."¹⁶⁷⁰

(U) CPT Wood said that "sleep management was approved by the [Commanding General] about a dozen times" during her time at Abu Ghraib.¹⁶⁷¹ She stated that she "personally remember[ed] seeing LTG Sanchez's signature on some approvals for sleep management."¹⁶⁷² COL Pappas said that he believed the October 12, 2003 CJTF-7 policy gave him the authority to authorize sleep management.¹⁶⁷³

[REDACTED] A December 14, 2003 memo for LTG Sanchez signed by COL Pappas approved "sleep management" for three detainees captured in conjunction with Saddam Hussein.¹⁶⁷⁴ COL Pappas stated that he "couldn't say for sure" whether he actually sent the memo to LTG Sanchez but that he "signed it with the intent of it going to him."¹⁶⁷⁵ LTG Sanchez said that, other than requests to approve segregation in excess of 30 days, he did "not recall signing any other memos" approving other interrogation techniques.¹⁶⁷⁶

E. Sensory Deprivation and Isolation (U)

(U) "Deprivation of light and auditory stimuli" was authorized by the Secretary of Defense for use at GTMO on December 2, 2002.¹⁶⁷⁷

¹⁶⁶⁷ Statement of COL Jerry Philabaum (May 26, 2004).

¹⁶⁶⁸ Interview of MP officer (February 10, 2004).

¹⁶⁶⁹ Article 32 Transcript U.S. v Davis (April 7, 2004) at 14.

¹⁶⁷⁰ *Fay Report* at 70.

¹⁶⁷¹ Statement of CPT Carolyn Wood (December 17, 2004) at 6.

¹⁶⁷² *Ibid.*

¹⁶⁷³ Committee staff interview of COL Thomas Pappas (October 12, 2007).

¹⁶⁷⁴ Memorandum from COL Thomas Pappas for LTG Ricardo Sanchez, *Exception to CJTF-7 Interrogation and Counter Resistance Policy* (December 14, 2003).

¹⁶⁷⁵ Statement of COL Thomas Pappas (January 25, 2006) at 9.

¹⁶⁷⁶ Statement of LTG Ricardo Sanchez (November 23, 2004) at 6.

¹⁶⁷⁷ Secretary of Defense Approval of Counter-Resistance Techniques (December 2, 2002).

[REDACTED]

[REDACTED] A January 24, 2003 memo from the CJTF-180 Deputy SJA stated that "deprivation of light and sound in the living areas" had been utilized and recommended that "use of light and noise deprivation" (not limited to living areas) be approved for implementation.¹⁶⁷⁸ The technique was subsequently considered available for use in Afghanistan.¹⁶⁷⁹

(U) Sensory deprivation was never listed in CJTF-7 policy as an approved technique. It was listed, however, as an approved technique in an October 9, 2003 interrogation rules of engagement (IROE) document for interrogators at Abu Ghraib.¹⁶⁸⁰ A subsequent IROE also listed the technique but said its use "must be approved by the [Commanding General], CJTF-7 prior to employment."¹⁶⁸¹

(U) Major General Fay's report identified several specific instances where detainees at Abu Ghraib were placed in a small room in Tier 1A of Abu Ghraib that was referred to as "the hole" and where they were subject to total isolation and light deprivation.¹⁶⁸² The report said that conditions for isolating detainees "sometimes included being kept naked in very hot or very cold, small rooms, and/or completely darkened rooms, clearly in violation of the Geneva Conventions."¹⁶⁸³

(U) MG Fay stated that the "environment created at Abu Ghraib contributed to the occurrence" of detainee abuse there.¹⁶⁸⁴ But MG Fay was not the first to note the environment at Abu Ghraib as problematic. An assessment of Abu Ghraib by a retired Army Colonel Stuart Herrington in late 2003 had referred to Abu Ghraib as a "pressure cooker" and cited an urgent need to improve conditions at the facility.¹⁶⁸⁵

F. "Lost Opportunity" to Fix Problems at Abu Ghraib

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

(U) [REDACTED] In November 2003, Terry Ford, the Army Assistant Chief of Staff for Intelligence (G-2) and BG Barbara Fast, the CJTF-7 Director for Intelligence, commissioned

¹⁶⁷⁸ Memo from LTC Robert Cotell to CENTCOM SJA, *CJTF 180 Interrogation Techniques* (January 24, 2003) at 4, 9.

¹⁶⁷⁹ Church Report at 7.

¹⁶⁸⁰ *CJTF-7 Interrogation Rules of Engagement* (October 9, 2003).

¹⁶⁸¹ *CJTF-7 Interrogation Rules of Engagement* (October 16, 2003).

¹⁶⁸² Fay Report at 94.

¹⁶⁸³ *Ibid.* at 28.

¹⁶⁸⁴ *Ibid.* at 9.

¹⁶⁸⁵ Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 2.

[REDACTED]

retired Army Colonel Stuart Herrington to assess U.S. intelligence operations in Iraq.¹⁶⁸⁶ COL Herrington had also assessed intelligence operations at Guantanamo Bay in March 2002.¹⁶⁸⁷

(U) Shortly before leaving for Iraq, COL Herrington received a call from [REDACTED] the former Chief of the Iraq Survey Group's Joint Interrogation and Debriefing Center (JIDC). [REDACTED] told COL Herrington of his concern that detainees had been "tortured and beaten" by "agency guys" and SMU TF personnel in Iraq.¹⁶⁸⁸ COL Herrington decided to look into [REDACTED] claims during his assessment visit.

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

(U) After arriving in Iraq, COL Herrington and his team visited the interrogation facility at Abu Ghraib. While the team did not see evidence that detainees were being "illegally or improperly treated" at the facility, they did note several serious deficiencies.¹⁶⁸⁹

(U) In his written report of the visit, COL Herrington cited an urgent need to improve conditions at Abu Ghraib.¹⁶⁹⁰ He cited overpopulation of the facility as a problem that could lead to further rioting and danger to U.S. personnel. He commented that the leadership at Abu Ghraib felt the facility was a "pressure cooker" and that it was "only a matter of time before prisoners staged an uprising" and that "bad things" such as "death, injury, or hostage situations" were likely to occur.¹⁶⁹¹ COL Herrington also assessed that shortages of interrogators and equipment had resulted in a failure to interrogate detainees of intelligence value.¹⁶⁹² He concluded that Abu Ghraib was simply "unsuitable for the exploitation of high value detainees."¹⁶⁹³

(U) COL Herrington also expressed concern with the practice of not assigning Internment Serial Numbers (ISNs) to certain detainees. He wrote in his assessment report that the creation of "ghost" detainees who were not in the accounting system carried certain risks "not the least of which is that it may be technically illegal."¹⁶⁹⁴

(U) On December 9, 2003, COL Herrington met with MG Barbara Fast, CJTF-7's Director for Intelligence (CJ-2).¹⁶⁹⁵ He later described her as "astonished" by his observations of

¹⁶⁸⁶ Department of Defense Office of Inspector General, Detainee Abuse Evaluation Memorandum for the Record, October 20, 2004 meeting with Col (Ret) Stuart A. Herrington (undated) at 1 (hereinafter DoD IG, Herrington Interview).

¹⁶⁸⁷ See Section I F, *supra*.

¹⁶⁸⁸ DoD IG, Herrington Interview at 1.

¹⁶⁸⁹ Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 3.

¹⁶⁹⁰ *Ibid.*

¹⁶⁹¹ *Ibid.*

¹⁶⁹² *Ibid.* at 8.

¹⁶⁹³ *Ibid.* at 2-3.

¹⁶⁹⁴ *Ibid.* at 4.

¹⁶⁹⁵ Army IG, Interview of COL (Ret) Stuart Herrington (November 3, 2004) at 17; DoD IG, Herrington Interview.

[REDACTED]

Abu Ghraib.¹⁶⁹⁶ He said that "in a couple of cases she said, 'I was unaware of that. I didn't know that' or 'I thought we fixed that.'" ¹⁶⁹⁷ COL Herrington added that, "It was very evident to me that she was not being well informed" by her staff.¹⁶⁹⁸

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

(U) While visiting the Iraq Survey Group facility, COL Herrington learned from ISG medical personnel that prisoners arriving at the ISG who had been captured by the SMU TF showed signs of "having been beaten" by their captors.¹⁶⁹⁹ The report was consistent with what the retired Army Colonel had been told by [REDACTED] the former ISG JIDC Chief, prior to his visit. When, during his visit, COL Herrington asked the Officer-in-Charge (OIC) of the JIDC whether these problems had been reported to higher authority, the OIC advised him that "everyone knows about it."¹⁷⁰⁰

(U) COL Herrington wrote in his report that an OGA representative told him that OGA personnel had been instructed not to have any involvement with interrogation operations at the SMU TF as the "practices there were in contravention to his Agency's guidance on what was and what was not permissible in interrogating detainees."¹⁷⁰¹ He added that he had been told by his CJTF-7 escort that it would be "difficult, if not impossible" to visit the SMU TF facilities. His written report stated that:

Based on 1) What my source [REDACTED] told me before I deployed about what he observed concerning mistreatment; 2) The statement of the ISG-JIDC OIC on the same subject; and 3) the OGA representative's statement, it seems clear that [the SMU TF] needs to be reined in with respect to its treatment of detainees.¹⁷⁰²

4. *COL Herrington Reports Findings (U)*

(U) When COL Herrington returned to the U.S. and briefed LTG Keith Alexander, the Army G2, and his deputy Terry Ford, he reiterated the concerns about what he had seen in Iraq and stated, "when it becomes known, everybody who touched it will be in trouble."¹⁷⁰³ COL Herrington later told the DoD IG that the two were "very supportive and expressed confidence in his assessment, but no official follow-ups were discussed or scheduled at that time."¹⁷⁰⁴

¹⁶⁹⁶ Army IG, Interview of COL (Ret) Stuart Herrington (November 3, 2004) at 17.

¹⁶⁹⁷ Ibid.

¹⁶⁹⁸ Ibid. at 16.

¹⁶⁹⁹ Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 7.

¹⁷⁰⁰ Herrington to Fast, *Report of CI/HUMINT Evaluation Visit* (December 12, 2003) at 7.

¹⁷⁰¹ Ibid.

¹⁷⁰² Ibid.

¹⁷⁰³ DoD IG, Herrington Interview at 3.

¹⁷⁰⁴ Ibid. at 4.

[REDACTED]

[REDACTED]

(U) COL Herrington told the DoD IG that he expected that CJTF-7 and the Army G2 would investigate the issues he raised.¹⁷⁰⁵ However, he said they never contacted him and he was notified by CJTF-7 in April of 2004 that there had been "insufficient evidence to substantiate" what he had heard from the former ISG JIDC Chief about detainee mistreatment in Iraq.¹⁷⁰⁶ The Office of the Staff Judge Advocate at CJTF-7 stated in an April 7, 2004 letter to COL Herrington that the investigating officer had not been able to "recreate those conversations upon which [COL Herrington's] report was based" and that it had been difficult to "pin down timelines and events in time."¹⁷⁰⁷

(U) The allegations raised by COL Herrington were the subject of an investigation conducted by CJTF-7 in early 2004. In what VADM Church described as an "extremely brief, three-page report," the CJTF-7 investigating officer found no proof to substantiate the allegations against the SMUTF.¹⁷⁰⁸ VADM Church criticized the CJTF-7 report as "extremely brief and cursory" with "obvious gaps in the investigation methodology."¹⁷⁰⁹ VADM Church called the failure to more thoroughly investigate the allegations a "lost opportunity to address potential detainee abuse in Iraq early on."¹⁷¹⁰

XIV. Interrogation Policies Following Abu Ghraib (U)

[REDACTED] While CENTCOM legal concerns had led to CJTF-7's removal of most of the aggressive interrogation techniques from its interrogation policy in October 2003, interrogation policies issued by Task Forces under CENTCOM Command, including the Combined Joint Special Operations Task Force Arabian Peninsula (CJSOTF-AP), CJTF-180 (the conventional forces in Afghanistan), and the Special Mission Units in Iraq and Afghanistan continued to include aggressive interrogation techniques well into 2004.

A. February 2004 CJSOTF Interrogation SOP (U)

[REDACTED] The Combined Joint Special Operations Task Force Arabian Peninsula (CJSOTF-AP) operated under the tactical command of CJTF-7. CJSOTF-AP contained units from the 5th Special Forces Group, [REDACTED]

¹⁷⁰⁵ Ibid.

¹⁷⁰⁶ Ibid.

¹⁷⁰⁷ Letter from Office of the Staff Judge Advocate to COL Stuart Herrington (April 7, 2004).

¹⁷⁰⁸ Church Report at 61.

¹⁷⁰⁹ Ibid.

¹⁷¹⁰ Ibid.

¹⁷¹¹ AR-15-6 Investigation of CJSOTF-AP and 5th SF Group Detention Operations (November 8, 2004) at 13, 15, 71 (hereinafter "Formica Report").

[REDACTED]

[REDACTED]

[REDACTED] That policy had been superseded by an October 12, 2003 policy that was issued after CENTCOM raised legal concerns with techniques in the earlier policy.¹⁷¹⁴

[REDACTED] On February 27, 2004, [REDACTED] Commander, [REDACTED] issued an interrogation policy for [REDACTED] using the September 14, 2003 CJTF-7 policy as its basis and authorizing the use of aggressive interrogation techniques, including the presence of military working dogs, stress positions, sleep management, loud music, and light control, and environmental manipulation.¹⁷¹⁵ The policy stated that certain techniques, such as presence of military working dogs, stress positions, and loud music and light control, required approval by the CJTF-7 Commander if they were to be used against enemy prisoners of war. The use of those techniques against all other detainees, however, was permitted with the written approval of a [REDACTED] Deputy Commander or Commander.

[REDACTED]

[REDACTED]¹⁷¹⁷ A report completed by Brigadier General Richard Formica stated that [REDACTED] "some detainees were wet down and placed in air conditioned room or outside in cold weather."¹⁷¹⁸

[REDACTED]

[REDACTED]¹⁷¹⁹

[REDACTED] The March 23, 2004 policy stated that "you should consider the fact that some interrogation techniques are viewed as inhumane or otherwise inconsistent with international law

¹⁷¹³ Statement of COL Hector Pagan (August 2, 2004).

¹⁷¹³ Statement of LTC Michael Black (November 3, 2004).

¹⁷¹⁴ See Section XII E, *supra*.

¹⁷¹⁵ [REDACTED] Interrogation and Counter-Resistance Policy (February 27, 2004) at 2-3.

¹⁷¹⁶ [REDACTED] Interrogation and Counter-Resistance Policy (March 23, 2004) at 3.

¹⁷¹⁷ Ibid.

¹⁷¹⁸ Formica Report at 71.

¹⁷¹⁹ [REDACTED] Interrogation and Counter-Resistance Policy (March 23, 2004) at 4.

[REDACTED]

before applying each technique. These techniques are labeled with a [CAUTION].¹⁷²⁰ Environmental manipulation, the use of power tools, stress positions, and the presence of working dogs were all marked with the word "CAUTION."¹⁷²¹

[REDACTED]

[REDACTED] BG
Formica also found that some detainees held by a tactical unit were "kept naked for the initial interrogation" and fed only bread or crackers and water "if they did not cooperate with ... interrogators."¹⁷²³ He said that a detainee held by another tactical unit under CJSOTF-AP command "may have been fed just bread and water for 17 days."¹⁷²⁴

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

[REDACTED] The Department of Defense provided the Committee an undated document drafted by a Chief Warrant Officer from the 2nd Brigade, 25th Infantry Division. The 25th Infantry Division was deployed to Iraq and stationed outside Kirkuk from January 2004 through February 2005. The document, called "Camp Honesty Interrogation Plan" stated that it was "based off of U.S. SERE Training Doctrine."¹⁷²⁵ It described subjecting detainees to "sensory over-stimulation" where they would be placed, handcuffed behind their backs in so-called "black room[s]."¹⁷²⁶ The plan stated that two soldiers with night vision goggles would be present in the room and would "touch [the] detainee on [the] head, hands and feet with string simulating sensors."¹⁷²⁷ In addition, sound would be used to "activate and confuse auditory sensors" resulting in "heart-rate increase and increased stress levels."¹⁷²⁸

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

[REDACTED] The interrogation policy in place for CJTF-180, the conventional forces in Afghanistan, also continued to include aggressive interrogation techniques well into 2004. A March 27, 2004 CJTF-180 Standard Operating Procedure, signed by LTC Charles Pede, the Staff Judge Advocate, LTC Scott Berrier, the Director of Intelligence, and LTC Clayton Cobb, the MP Commander for CJTF-180 included a list of "standard [tactics, techniques, and procedures for

¹⁷²⁰ Ibid. at 6.

¹⁷²¹ Ibid. at 4.

¹⁷²² Formica Report at 8.

¹⁷²³ Ibid. at 74.

¹⁷²⁴ Ibid. at 8.

¹⁷²⁵ THT 160 [REDACTED], *Camp Honesty Interrogation Plan* (undated).

¹⁷²⁶ Ibid.

¹⁷²⁷ Ibid.

¹⁷²⁸ Ibid.

[REDACTED]

use" at Bagram.¹⁷²⁹ That list included the use of "safety positions," "sleep adjustment," "sensory overload," invading a detainee's personal space to "increase psychological discomfort," "dietary manipulation," adjusting temperature or introducing an unpleasant smell to "create moderate discomfort," and using blacked out goggles as an interrogation technique.¹⁷³⁰

D. Special Mission Unit Task Force Interrogation Policies (U)

[REDACTED]

Prior to March 2004, however, each operated under a distinct interrogation SOP. On March 26, 2004 the SMU TF implemented a single interrogation policy that covered SMU TF operations in both Iraq and Afghanistan.¹⁷³¹

[REDACTED] The March 26, 2004 SMU SOP authorized 14 "interrogation techniques" not explicitly listed in FM 34-52, including use of muzzled dogs, "safety positions (during interrogations)," sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation.¹⁷³²

[REDACTED] According to the Church Special Focus Team Report, the March 26, 2004 SMU TF SOP included a larger number of interrogation techniques outside of FM 34-52 than the SOPs of any other military organization at the time.¹⁷³³ In fact, many of the techniques in that SOP had been abandoned by conventional forces in Afghanistan months earlier, after CENTCOM identified legal concerns with the techniques.¹⁷³⁴ Although the authority in the March SOP to use "muzzled dogs" was rescinded on April 22, 2004, the remainder of the techniques remained authorized until May 6, 2004, when GEN John Abizaid, the CENTCOM Commander, suspended use of all non-FM 34-52 techniques.¹⁷³⁵ The Church Special Focus Team report said the techniques were suspended as a result of detainee abuse at Abu Ghraib.¹⁷³⁶ GEN Abizaid stated

¹⁷²⁹ CJTF-180 SJA Memorandum for Record, *CJTF-180 Detainee Operations Standard Operating Procedures* (March 27, 2004).

¹⁷³⁰ *Ibid.*

¹⁷³¹ *Church Special Focus Team Report* at 15.

¹⁷³² [REDACTED] The 14 techniques were the use of military working dogs, safety positions (during interrogations), use of blackened goggles/car muffs during interrogation, sleep adjustment/sleep management, use of female interrogators, sensory deprivation, sensory overload, change of environment/ environmental manipulation, diet manipulation, use of falsified documents or reports and deception, use of individual fears, use of isolation, fear of long-term incarceration, and mild physical contact. Battlefield Interrogation Team and Temporary Screening Facility Standing Operating Procedures (SOP), Change 2 Dated May 18, 2004.

¹⁷³³ *Church Special Focus Team Report* at 15.

¹⁷³⁴ *Ibid.*

¹⁷³⁵ *Ibid.* at 16; Memorandum from SMU TF Commanding General to USCENTCOM, [REDACTED] *Request for Use of Interrogation Techniques* (May 27, 2004); CENTCOM/SOCOM Briefing to Committee Staff (December 21, 2007).

¹⁷³⁶ *Church Special Focus Team Report* at 16.

[REDACTED]

[REDACTED]

that neither he nor his staff "reviewed or approved" the March 2004 SMU TF SOP "prior to its issuance."¹⁷³⁷

[REDACTED] Several interrogation techniques authorized for use by the SMU Task Force prior to GEN Abizaid's suspension, including stress positions, sleep adjustment/management, sensory overload, and sensory deprivation were similar to techniques used in the resistance phase of SERE training. In fact, undated SMU TF SOPs from this period suggest a connection between SMU TF interrogation techniques and SERE. The SOPs state, under interrogation "Standards," that "[i]nterrogations will be done [in accordance with] all applicable rules and regulations to include... Survival/Evasion/Resistance/and Escape regulations."¹⁷³⁸

[REDACTED] On May 23, 2004 [REDACTED] the SMU TF Commander, sent a message to [REDACTED] stating that the May 6, 2004 [REDACTED]

[REDACTED] wrote that detainees held by his TF were "hardened" and "trained to resist interrogation" and added:

FOR THIS LIMITED GROUP OF DETAINEES, [REDACTED]

[REDACTED] SLEEP MANAGEMENT, ENVIRONMENTAL MANIPULATION (LIGHT AND NOISE), EXTENDED INTERROGATIONS, VARYING COMFORT POSITIONS AND THE USE OF HOODS TO INDUCE A PSYCHOLOGICAL SENSE OF ISOLATION AND DEPENDENCE ON THE INTERROGATORS ARE PARTICULARLY USEFUL.¹⁷⁴⁰

[REDACTED] told [REDACTED] that he planned to request "authority to employ" additional techniques.¹⁷⁴¹

[REDACTED] On May 27, 2004, [REDACTED] formally requested that CENTCOM grant authority to the SMU TF to use five interrogation techniques: sleep management, control positions, environmental manipulation, separation, and change of scenery.¹⁷⁴² The request

¹⁷³⁷ Memorandum from General John Abizaid, Responses to Request for Information from VADM Church (August 6, 2004).

¹⁷³⁸ [REDACTED] See Department of Defense Headquarters, Joint Task Force 121 (JTF-121), Baghdad Air Base, Iraq CJTF-121 Battlefield Interrogation facility/Team Standard Operating Procedures.

¹⁷³⁹ Message from Commander [REDACTED] to Commander [REDACTED] DTG 231006Z MAY 04 (May 23, 2004) at 1.

¹⁷⁴⁰ Ibid. (emphasis in original).

¹⁷⁴¹ Ibid. at 1.

¹⁷⁴² [REDACTED]

[REDACTED]

stated that control positions – defined as “requiring the detainee to stand, sit, kneel, squat, maintain sitting position with back against the wall, bend over chair, lean with head against wall, lie prone across chairs, stand with arms above head or raised to shoulders, or other normal physical training positions” – could also “be used in order to implement sleep management” and that “in the most exceptional circumstances, and on approval from [the SMU TF Commander],” interrogators could “use handcuffs to enforce the detainee’s position.”¹⁷⁴³ An interrogator could require a detainee to remain in a control position for “no more than 45 minutes in one hour and for no more than six hours in a 24 hour period.”¹⁷⁴⁴

(U) Notwithstanding the May 6, 2004 suspension of all non-FM 34-52 techniques, on June 4, 2004, GEN Abizaid approved the use of sleep management, environmental manipulation, separation, and change of scenery for the SMU TF.¹⁷⁴⁵ He delegated the approval authority for the use of those techniques to the “first general officer in the chain of command,” and specified that none of the techniques could be used beyond a 72 hour period “without a review by [the SMU TF Commander] or the first general officer in the chain of command.”¹⁷⁴⁶

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

A. May 2004 CENTCOM Request (U)

(U) In the wake of the detainee abuse at Abu Ghraib, Joint Personnel Recovery Agency (JPRA) personnel traveled to CENTCOM headquarters to coordinate a plan to send a training team to assist CENTCOM with interrogations in Afghanistan.

■ According to Christopher Wirts, the Chief of JPRA’s Operational Support Office (OSO) the meeting at CENTCOM took place after the mission to Afghanistan had been “tentatively approved.”¹⁷⁴⁷ On May 12, 2004 CENTCOM made a formal request through the Joint Staff for JPRA “interrogation/ exploitation” assistance.

■ In the May 12, 2004 request, CENTCOM asked that JFCOM provide a Joint Personnel Recovery Agency (JPRA) team to “conduct an on-site assessment of [Bagram Collection Point] operations in Bagram and Kandahar to assist in the development and

Request for Use of Interrogation Techniques (May 27, 2004).

¹⁷⁴³ Ibid.

¹⁷⁴⁴ Ibid.

¹⁷⁴⁵ ■ Church Special Focus Team Report at 16. Although the request defined “separation” to include the use of goggles, earmuffs, and hooding, the CENTCOM Commander approved “separation,” but not the “use of hooding.” Memorandum from General John Abizaid to Commander, ■ *Request for Use of Interrogation Techniques, Dated 27 May 2004 (June 4, 2004).*

¹⁷⁴⁶ Ibid.

¹⁷⁴⁷ ■ Email from Christopher Wirts to Thomas Markland, John Huffstutter, David Ellis (January 19, 2005). Mr. Wirts’s email stated “Initially when the mission was tentatively approved we went to HQ CENTCOM and reviewed/briefed the J2X on how we intended to support. They were satisfied with our methods and intent. After the CENTCOM visit, we were called to JFCOM and met with ADM [Giambastiani], Gen Soligan, Gen Wagner, JFCOM Legal and a host of other personnel. In the days following the meeting, the mission was turned off.”

[REDACTED]

implementation of an indoctrination program and other interrogation / exploitation options."¹⁷⁴⁸ The CENTCOM request stated that the JPRA team would "... observe exploitation procedures at the site to assist in identifying improvements or development of alternate approaches to meet exploitation objectives."¹⁷⁴⁹

[REDACTED] That same day, JPRA personnel briefed JFCOM Deputy Commander LTG Wagner, JFCOM Chief of Staff Maj Gen James Soligan, and JFCOM Commander ADM Giambastiani, about the planned support.¹⁷⁵⁰

(U) Materials prepared for those briefings stated that after September 11, 2001, JPRA was "requested to support [REDACTED] [Defense Intelligence Agency], [REDACTED] GTMO, Fort Huachuca, and [REDACTED]"¹⁷⁵¹

[REDACTED] The briefing materials specifically highlighted JPRA's September 2003 trip to Iraq in support of the Special Mission Unit Task Force there and described JPRA's intended support for CENTCOM in Afghanistan.¹⁷⁵² Among JPRA's "key tasks" for the planned Afghanistan trip was to observe "exploitation procedures" used by CENTCOM personnel and to "identify areas for improvement" and "assist and advise on alternate approaches."¹⁷⁵³ The briefing materials stated that JPRA intended to provide "on the spot recommendations to the [CENTCOM] staff if appropriate" on these alternate approaches.¹⁷⁵⁴

[REDACTED] ([REDACTED] The briefing materials also included a proposed Concept of Operations (CONOP) for the Afghanistan trip.¹⁷⁵⁵ The proposed CONOP was similar in scope and structure to the CONOP JPRA had circulated in September 2003, near the end of the Iraq trip. Unlike the Iraq CONOP, however, the Afghanistan CONOP included many of the edits that had been suggested by CAPT Daniel Donovan, the JFCOM SJA (e.g., clarifying that Rules of Engagement must be within U.S. law and policy including – but not simply limited to – the Torture Convention, removing reference to "constant sensory deprivation," etc.). The Afghanistan CONOP did not, however, reflect all of the SJA's edits. For example, [REDACTED]

¹⁷⁴⁸ Message from CENTCOM, Request for USJFCOM Support, DTG: 121729Z May 04 (May 12, 2004).

¹⁷⁴⁹ Ibid.

¹⁷⁵⁰ Email from Randy Moulton to Steven Johns and Fred Milburn (May 10, 2004); Committee staff interview of Christopher Wirts (January 4, 2007)

¹⁷⁵¹ Email from Randy Moulton to [REDACTED], James Soligan, Robert Wagner, Fred Milburn, et al., attaching *Briefing Slides and Executive Summary with Iraq CONOP*, Committee staff interview of Christopher Wirts (January 4, 2007).

¹⁷⁵² As part of the briefing materials, an executive summary of the September 2003 trip identified the JPRA-identified deficiencies as the SMU TF's "lack of clear legal guidance on status of captured personnel," "lack of established [Rules of Engagement or Standard Operating Procedure]," "lack of training and preparation," and "lack of information sharing." [REDACTED] See Executive Summary, see also Briefing Slides at 5-8.

¹⁷⁵³ Briefing slides at 6-8.

¹⁷⁵⁴ Ibid.

¹⁷⁵⁵ Several drafts of a Concept of Operations (CONOP) for the planned trip by JPRA personnel to Afghanistan were provided to the Committee. While those drafts are not dated, communications between and/or among JPRA and JFCOM personnel discussing revisions to the drafts suggest when those drafts were produced and how the CONOP evolved.

[REDACTED]

[REDACTED] CAPT Donovan had recommended removing these techniques from the Iraq CONOP.¹⁷⁵⁷

[REDACTED] The reference to JPRA's prior interrogation support in the briefing materials prompted a discussion among ADM Giambastiani, LTG Wagner, Maj Gen Soligan and CAPT Donovan about the September 2003 trip to Iraq and the CONOP that was created during that trip.

[REDACTED] Col Moulton, the JPRA Commander, had earlier defended the inclusion of the full range of SERE techniques in the Iraq CONOP by saying that "all the techniques discussed [in the CONOP] are ones that [JPRA] (or other services) employ in our training (with considerable oversight - only the Navy uses the waterboard)." He continued: "In discussions with [the Office of Secretary of Defense General Counsel] last year, they specifically requested what type of techniques we found most effective against our personnel. Our intent is to provide a prioritized list of what works on our folks, and let the lawyers and Combatant Commanders decide to what degree and which target audience they apply these, if any, techniques."¹⁷⁵⁸

[REDACTED] During consideration of the Afghanistan trip, CAPT Donovan forwarded Col Moulton's email to ADM Giambastiani, LTG Wagner, and Maj Gen Soligan and wrote:

When [Col Moulton] says that the Navy uses [waterboarding], he means that they use it against our own people during survival, evasion, resistance and escape (SERE) training. In other words, qualified Navy SERE instructors use this to demonstrate to our own people what the ENEMY is likely to do to them in the event they are captured, and (hopefully) to train our people how to resist or cope with such techniques.

JPRA and SERE folks will swear that the "water board" does not actually physically harm subjects if it is administered by properly trained SERE instructors, under close supervision, etc. For that reason, some argue that the

¹⁷⁵⁶ Ibid.

¹⁷⁵⁷ [REDACTED] Shortly after the briefing, a JFCOM action officer sent JPRA leadership a list of action items for LTG Wagner and MG Soligan. Among those were JPRA (1) locating the after action report from JPRA's support to [REDACTED] and (2) preparing a message to the Chairman of the Joint Chiefs of Staff "to provide policy/guidance on possibility of extending JPRA roles/responsibilities to the offensive vice defensive preparations/practices." In response, Col. Moulton told the JFCOM action officer that "[t]here was no [after action report] for the [REDACTED] support" and instead directed him to the "executive summary" of the trip provided in the briefing materials. Col. Moulton also stated that it was JPRA's understanding that "[Admiral Giambastiani] would approve our participation [in the Afghanistan trip] with a [Voice Command] from the Joint Staff regardless of the status of the policy guidance (he has previously approved and we are currently supporting other 'offensive' efforts)." Email from Randy Moulton to Steven Johns, Fred Milburn, Christopher Wirts, and Dan Donovan (May 13, 2004).

¹⁷⁵⁸ Email from Col. Randy Moulton to Maj Gen James Soligan, CAPT Dan Donovan, RADM John Bird, LTG Robert Wagner et al. (September 30, 2003).

[REDACTED]

"water board" does not technically constitute torture under domestic or international law. I can only say that in my opinion, that argument does not pass the "Washington Post test." I fail to see how anyone can reasonably say that employing such techniques against those in our custody is worthy of the United States, no matter how much we may need the information. In my view, for the U.S. to do this "lowers the bar" and ensures, if there is any doubt, that similar techniques will be employed against any US personnel captured by our enemies. For this reason, there is risk involved in having JPRA "advise" interrogators in CENTCOM – JPRA's expertise concerns the effective techniques used by the BAD GUYS against us, and I frankly don't believe that's the kind of advice we should be giving to the U.S. side. I see great potential for theater personnel to do it wrong, and to then say, "well JPRA said this was what we should do."¹⁷⁵⁹

[REDACTED] On May 13, 2004, the day after Col Moulton briefed the JFCOM leadership, he circulated a revised CONOP for the Afghanistan trip. The revised CONOP stated that JPRA would "not recommend or train physical pressures," however, it also stated that a "key task" of the mission was to observe "exploitation procedures at the site to assist in identifying improvements" and develop "alternate approaches to meet exploitation objectives."¹⁷⁶⁰ CAPT Donovan immediately expressed his concern with that "key task" in an email to ADM Giambastiani and LTG Wagner, stating:

I [am] concerned about JPRA "identifying alternate approaches to meet exploitation objectives" (read: more effective interrogation methods). Since JPRA's expertise is all the unlawful interrogation techniques the enemy uses against captured US forces, I recommend you consider NOT having JPRA get involved in this aspect of CENTCOM's request.¹⁷⁶¹

[REDACTED] CAPT Donovan also expressed his concerns about the intended mission to Col Moulton, writing in a May 13, 2004 email:

[I]t is not advisable to have JPRA assist in "improving exploitation" (i.e., suggesting more effective interrogation techniques). JPRA's core expertise is in training DoD personnel to resist/cope with techniques – many of them illegal – that may be employed by our enemies if DoD personnel are captured. It just doesn't make sense to me to have experts in what the "bad guys" do to us advising our U.S. interrogators – there is a real risk, if theater interrogators then "do it wrong" for them to claim "JPRA's experts recommended this."

¹⁷⁵⁹ Email from CAPT Dan Donovan to ADM Edmund Giambastiani, LTG Robert Wagner and Maj Gen James Soligan (May 13, 2004) (emphasis in original).

¹⁷⁶⁰ [REDACTED] Draft Concept of Operations in Support of Pending CENTCOM Joint Interrogation Facility Observation and Assessment Requirement.

¹⁷⁶¹ Email from CAPT Dan Donovan to ADM Edmund Giambastiani, LTG Robert Wagner, Maj Gen James Soligan, (May 13, 2004) (emphasis in original).

[REDACTED]

Accordingly, my recommendation is that JPRA not get involved in this aspect of the requested support.¹⁷⁶²

[REDACTED] The next day, CAPT Donovan sent another email to ADM Giambastiani, LTG Wagner, and Maj Gen Soligan pointing out the "potential risk to the entire JPRA mission if they are in any way implicated in the current mess in Iraq."¹⁷⁶³ JPRA's planned May 2004 mission to Afghanistan was subsequently called off.¹⁷⁶⁴

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

[REDACTED] On June 20, 2004, about a month after their initial request, CENTCOM made another request to the Joint Staff for JPRA assistance at interrogation facilities in Bagram and Kandahar in Afghanistan.¹⁷⁶⁵ The request sought a team from JPRA to "conduct on-site assessments" in July and to "assist the commands in . . . developing and implementing an indoctrination program and other interrogation / exploitation options, required as a result of the assessments."¹⁷⁶⁶ Specifically, CENTCOM requested that the JPRA team "observe exploitation procedures at the site and identify improvements or develop alternate approaches to meet exploitation objectives."¹⁷⁶⁷

[REDACTED] When the request arrived at JFCOM, CAPT Donovan again raised concerns with Maj Gen Soligan about the scope of the request. In a June 21, 2004 email, he asked "whether JPRA is really the appropriate choice" for the mission described in the CENTCOM request, i.e., to "observe exploitation procedures at the site and identify improvements or develop alternate approaches to meet exploitation objectives."¹⁷⁶⁸ Maj Gen Soligan subsequently raised the issue with Maj Gen John Sattler, the CENTCOM Director of Operations (J3), who Maj Gen Soligan said told him that CENTCOM had made a "conscious decision on what capability they want."¹⁷⁶⁹

[REDACTED] CAPT Donovan also raised his concerns directly with lawyers at CENTCOM and the Joint Staff. In an email to the lawyers, he wrote:

¹⁷⁶² Email from CAPT Dan Donovan to Col. Randy Moulton and Col Fred Milburn (May 13, 2004).

¹⁷⁶³ Email from CAPT Dan Donovan to Maj Gen James Soligan, copying ADM Edmund Giambastiani and LTG Robert Wagner (May 14, 2004).

¹⁷⁶⁴ [REDACTED] According to Mr. Wirts, JPRA's OSO Chief, "[W]e went to HQ CENTCOM and reviewed/briefed the J2X on how we intended to support. They were satisfied with our methods and intent. After the CENTCOM visit, we were called to JFCOM and met with [Admiral Giambastiani, Maj Gen Soligan, LTG Wagner], JFCOM Legal and a host of other personnel. In the days following the meeting, the mission was turned off." Email from Christopher Wirts to Lt Col Thomas Markland, copying Lt Col John Huffstutter, Col David Ellis (January 19, 2005).

¹⁷⁶⁵ CENTCOM Request for USJFCOM Operational Support, DTG: 200800Z JUN 04 (June 20, 2004).

¹⁷⁶⁶ Ibid.

¹⁷⁶⁷ Ibid.

¹⁷⁶⁸ Email from CAPT Dan Donovan to Maj Gen James Soligan and LTG Robert Wagner (June 21, 2004).

¹⁷⁶⁹ Email from Maj Gen James Soligan to CAPT Dan Donovan (June 21, 2004).

[REDACTED]

I'm concerned that the folks from our Joint Personnel Recovery Agency (JPRA) – who oversee training US military personnel how to resist interrogations by our enemies (e.g., SERE training) – are the wrong guys to be advising US interrogators how to more effectively exploit PUCs. JPRA considers themselves to be the exploitation experts, but in many ways my view is that their expertise is in training US personnel how to best resist ILLEGAL techniques. This kind of advice may be the last thing you all want/need in Afghanistan right now.¹⁷⁷⁰

[REDACTED] Over the next month, JFCOM senior leadership discussed the proposed trip with JPRA and the Joint Staff. At JFCOM's request, JPRA developed and provided JFCOM with a training plan for the mission.¹⁷⁷¹ On June 30, 2004, Maj Gen Soligan told JPRA in an email to prepare for the trip, but directed them not to deploy until the trip was approved by JFCOM's Commander ADM Edmund Giambastiani.¹⁷⁷² JFCOM also discussed working with Joint Staff to find a capability outside JPRA to send to CENTCOM to assist with their detainee operations, but expected a "nonconcur" with any "recommendation to use other resources."¹⁷⁷³

[REDACTED] As discussions about the CENTCOM request continued within JFCOM, Col Kenneth Rollins, a SERE psychologist added his perspective on the advisability of sending JPRA personnel to assist with interrogations. The psychologist said:

[W]e need to really stress the difference between what instructors do at SERE school (done to INCREASE RESISTANCE capability in students) versus what is taught at interrogator[] school (done to gather information). What is done by SERE instructors is by definition ineffective interrogator conduct, and interrogator school, not SERE school is the appropriate focus and model for investigating interrogators. Simply stated, SERE school does not train you on how to interrogate, and things you "learn" there by osmosis about interrogation are probably wrong if copied by interrogators.¹⁷⁷⁴

[REDACTED] As Col Rollins's comments were circulated at JFCOM, LtCol Richard Posey, one of the JFCOM JAGs added that "[i]t would be difficult to come up with a stronger argument against concurring in this request."¹⁷⁷⁵ LtCol Posey added: "CENTCOM needs interrogation experts. JPRA is telling us . . . that their instructors are ineffective interrogators and probably do it wrong because their focus is on increasing resistance not decreasing it. For the same reasons, this does

¹⁷⁷⁰ Email from Dan Donovan to Joint Staff and CENTCOM lawyers (June 21, 2004) (emphasis in original).

¹⁷⁷¹ [REDACTED] The training plan was intended to provide the JFCOM Commander an idea of how JPRA would satisfy the request to "conduct on-site assessments" at Bagram and Kandahar and "assist the commands in . . . developing and implementing an indoctrination program and other interrogation / exploitation options . . ." Email from Maj Gen James Soligan to Col Randy Moulton, RADM John Bird, LTG Robert Wagner (June 23, 2004).

¹⁷⁷² Email from Maj Gen James Soligan to RADM John Bird, Col. Randy Moulton, et al. (June 30, 2004).

¹⁷⁷³ Email from LtCol Richard Posey to CAPT Alan Kaufman, copying LTC John Jones, CAPT Daniel Donovan (June 30, 2004); Email from LtCol Richard Posey to Maj Paul Voss, copying Col Fred Milburn, Lt Col Steven Johns, CAPT Alan Kaufman, LTC John Jones (July 12, 2004).

¹⁷⁷⁴ Email from LtCol Richard Posey to Maj Paul Voss, copying Col Fred Milburn, Lt Col Steven Johns, CAPT Alan Kaufman, LTC John Jones (July 12, 2004) (emphasis in original).

¹⁷⁷⁵ Ibid.

[REDACTED]

clear. If the purpose is to prevent OSD/GC, [REDACTED] and other DoD Interrogation organizations from making requests I'm not sure this memo is going to help.¹⁷⁷⁹

(U) A formal JFCOM policy memo relating to JPRA's "offensive" support to interrogation operations was not finalized until September 29, 2004, after the Inspector General of the Department of Defense began looking into the issue. In the September 2004 memo, Maj Gen Soligan wrote:

Recent requests from OSD and the Combatant Commands have solicited JPRA support based on knowledge and their application to U.S. strategic debriefing and interrogation techniques. These requests, which can be characterized as "offensive" techniques include, but are not limited to, activities designed not to increase one's resistance capabilities to interrogation techniques but rather intended to instruct personnel, for the purpose of gathering of information, on how to break down another's ability to withstand interrogation . . . The use of resistance to interrogation knowledge for "offensive" purposes lies outside the roles and responsibilities of JPRA.¹⁷⁸⁰

(U) The policy did not, however, explicitly prohibit JPRA from conducting such activities in all instances. Instead, it stated that all requests for "offensive" support should "continue to" be directed through JFCOM but instructed that:

[A]ny deviation in roles and responsibilities must be carefully scrutinized and vetted through proper legal and policy channels. JPRA personnel will not conduct any activities without specific approval from the USJFCOM Commander, Deputy Commander, or the Chief of Staff. Deviations from the JPRA chartered mission of this nature are policy decisions that will be forwarded to the Office of the Secretary of Defense (OSD) for action. JPRA will continue to direct all requests for external support through USJFCOM and refrain from providing any support or information unless specifically directed by USJFCOM as outlined above.¹⁷⁸¹

(U) As the Department of Defense Inspector General continued its inquiry into JPRA's prior "offensive" interrogation support, the DoD Inspector General asked JFCOM about the September 2004 policy memo.¹⁷⁸² In a February 2005 memo to the DoD Inspector General, LTG Wagner stated that the purpose of the September 2004 policy was to provide "clear guidance" and to "prevent use of JPRA outside the command's mission scope."¹⁷⁸³ Knowing that CENTCOM and Joint Staff had expressed interest in JPRA to assist or support "in-theater

¹⁷⁷⁹ Email from Col Randy Moulton to Maj Gen James Soligan, RADM John Bird, Maj Gen Jack Holbein (July 26, 2004).

¹⁷⁸⁰ Memo from Maj Gen James Soligan to Col Randy Moulton, *Joint Personnel Recovery Agency Mission Guidance* (September 29, 2004).

¹⁷⁸¹ Ibid.

¹⁷⁸² Memorandum for the Department of Defense Inspector General, signed by LTG Robert Wagner (February 10, 2005).

¹⁷⁸³ Ibid.

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¹⁷⁸¹ Ibid.

¹⁷⁸² Memorandum for the Department of Defense Inspector General, signed by LTG Robert Wagner (February 10, 2005).

¹⁷⁸³ Ibid.

[REDACTED]

interrogations," LTG Wagner said that JFCOM sought to clarify that "JPRA is primarily a school house, not an intelligence gathering activity."¹⁷⁸⁴ He added that "JPRA does not have not have personnel assigned to be interrogators," and that "the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations."¹⁷⁸⁵

(U) According to LTG Wagner, JFCOM issued the September 2004 policy statement "to ensure that JPRA activities remained within the scope of that Agency's mission charter."¹⁷⁸⁶ He stated that JFCOM considered requests for JPRA "interrogator support" to be "inconsistent" with JPRA's charter.¹⁷⁸⁷ He stated, however, that the memorandum was not "issued in response to suspected or known inappropriate JPRA activities, as no such activities were known by this headquarters to have been conducted."¹⁷⁸⁸ Notwithstanding that statement, however, by September 2004, when JFCOM issued the policy, JFCOM had already approved a trip by JPRA personnel to Iraq as well as other "offensive" interrogation support – activities that fell outside JPRA's roles and responsibilities.

¹⁷⁸⁴ Ibid.

¹⁷⁸⁵ Ibid.

¹⁷⁸⁶ Ibid.

¹⁷⁸⁷ Ibid.

¹⁷⁸⁸ Ibid.