U.S. Senate Committee on
Armed Services
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SENATE ARMED SERVICES COMMITTEE

HEARING: THE ORIGINS OF AGGRESSIVE INTERROGATION TECHNIQUES

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SENATE ARMED SERVICES COMMITTEE INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY

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Executive Summary

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

-- General David Petraeus

May 10, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) Memos from Lieutenant Colonel Baumgartner to the Office of Secretary of Defense General Counsel stated that JPRA would "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees." Lieutenant Colonel Baumgartner testified that he provided another government agency the same information he sent to the DoD General Counsel's office.

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

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

Department of Justice Redefines Torture (U)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) Captain Dalton, who was the Chairman's Legal Counsel, said that she had her own concerns with the GTMO request and directed her staff to initiate a thorough legal and policy review of the techniques. That review, however, was cut short. Captain Dalton said that General Myers returned from a meeting and advised her that Mr. Haynes wanted her to stop her review, in part because of concerns that people were going to see the GTMO request and the military services' analysis of it. Neither General Myers nor Mr. Haynes recalled cutting short the Dalton

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review, though neither has challenged Captain Dalton's recollection. Captain Dalton testified that this occasion marked the only time she had ever been told to stop analyzing a request that came to her for review.

Secretary of Defense Rumsfeld Approves Aggressive Techniques (U)

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

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

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

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

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

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SERE Techniques at GTMO (U)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aggressive Techniques Authorized in Afghanistan and Iraq (U)

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) As the events at Abu Ghraib were unfolding, Jack Goldsmith, the new Assistant Attorney General for the Office of Legal Counsel was presented with a "short stack" of OLC opinions that were described to him as problematic. Included in that short stack were the Bybee memos of August 1, 2002 and Mr. Yoo's memo of March 2003. After reviewing the memos, Mr. Goldsmith decided to rescind both the so-called first Bybee memo and Mr. Yoo's memo. In late December 2003, Mr. Goldsmith notified Mr. Haynes that DoD could no longer rely on Mr. Yoo's memo in determining the lawfulness of interrogation techniques. The change in OLC

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guidance, however, did not keep JPRA from making plans to continue their support to interrogation operations. In fact, it is not clear that the agency was even aware of the change.

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

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

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

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

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

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

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Senate Armed Services Committee Conclusions

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

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

Conclusions on SERE Training Techniques and Interrogations

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

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

Conclusions on Senior Official Consideration of SERE Techniques for Interrogations

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

Conclusion 6: The Central Intelligence Agency's (CIA) interrogation program included at least one SERE training technique, waterboarding. Senior Administration lawyers, including Alberto Gonzales, Counsel to the President, and David Addington, Counsel to the Vice President, were consulted on the development of legal analysis of CIA interrogation techniques. Legal opinions

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

Conclusions on JPRA Offensive Activities

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

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

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

Conclusions on GTMO's Request for Aggressive Techniques

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

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

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

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

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

Conclusions on Interrogations in Iraq and Afghanistan

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

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

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

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

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

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U.S. Senate Committee on
Armed Services
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SENATE ARMED SERVICES COMMITTEE

HEARING: THE ORIGINS OF AGGRESSIVE INTERROGATION TECHNIQUES

PART I OF THE COMMITTEE'S INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY

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

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

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

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

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

Today's hearing will explore part of the story: how it came about that techniques, called

SERE resistance training techniques, which are used to teach American soldiers to resist abusive interrogations by enemies that refuse to follow the Geneva Conventions, were turned on their head and sanctioned by Department of Defense officials for use offensively against detainees. Those techniques included use of stress positions, keeping detainees naked, use of dogs, and hooding during interrogations.

Background on Survival Evasion Resistance and Escape (SERE) Training

Some brief background on SERE, which stands for Survival Evasion Resistance and Escape training. The U.S. military has five SERE schools to teach certain military personnel – whose missions create a high risk that they might be captured – the skills needed to survive in hostile enemy territory, evade capture, and escape should they be captured. The resistance portion of SERE training exposes students to physical and psychological pressures designed to simulate abusive conditions to which they might be subject if taken prisoner by enemies that may abuse them. The Joint Personnel Recovery Agency – JPRA – is the DoD agency that oversees SERE training. JPRA's instructor guide states that a purpose of using physical pressures in the training is "stress inoculation," building soldiers' immunities so that should they be captured and subject to harsh treatment, they will be better prepared to resist. The techniques used in SERE resistance training can include things like stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures. It can also include face and body slaps and until recently, for some sailors who attended the Navy's SERE school, it included waterboarding – mock drowning.

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

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

getting them ready for what might confront them.

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

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

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

Department of Defense General Counsel's Office Contacts JPRA

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

In response to Mr. Shiffrin's request, Lt. Col. Baumgartner drafted a two-page memo, (TAB 1) and compiled several documents, including excerpts from SERE instructor lesson plans, that he attached to his memo saying JPRA would "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees." The memo was hand delivered to the General Counsel's office on July 25, 2002. Again, it is critical to remember here; these techniques are not used in SERE school to obtain intelligence, they are to prepare our soldiers to resist abusive interrogations.

The next day, Lt. Col. Baumgartner drafted a second memo (TAB 2), which included three attachments. One of those attachments (TAB 3) listed physical and psychological

pressures used in SERE resistance training including sensory deprivation, sleep disruption, stress positions, waterboarding, and slapping. It also made reference to a section of the JPRA instructor manual that talks about "coercive pressures" like keeping the lights at all times, and treating a person like an animal. Another attachment (TAB 4), written by Dr. Ogrisseg, also a witness today, assessed the long-term psychological effects of SERE resistance training on students and the effects of the waterboard.

This morning, the Committee will have the chance to ask Mr. Shiffrin, Lt. Col. Baumgartner, and Dr. Ogrisseg about these matters.

Office of Legal Counsel (OLC) Issues Legal Guidance for Interrogations

On August 1, 2002, a week after Lt. Col. Baumgartner sent his memos to the DoD General Counsel, the Department of Justice's Office of Legal Counsel (OLC) issued two legal opinions. One (TAB 5), commonly known as the first Bybee memo, was addressed to then-White House Counsel Alberto Gonzales and provided OLC's opinion on standards of conduct in interrogation required under the federal torture statute. That memo concluded:

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

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

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

JPRA Conducts Training for Guantanamo Bay Personnel

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

CIA Provides Advice to U.S. Southern Command's JTF-170 on Interrogations

On September 25, 2002, just days after GTMO staff returned from that training, a delegation of senior Administration lawyers, including Jim Haynes, General Counsel to the Department of Defense, John Rizzo, acting CIA General Counsel, David Addington, Counsel to the Vice President, and Michael Chertoff head of the Criminal Division at the Department of Justice, visited GTMO. An after action report (TAB 6) produced by a military lawyer after the visit noted that one purpose of the trip was to receive briefings on "intel techniques."

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

While the memo remains classified, minutes from the meeting where it was discussed are not. Those minutes (TAB 7) clearly show that the focus of the discussion was aggressive techniques for use against detainees.

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

Mr. Fredman, the senior CIA lawyer, suggested it's "very effective to identify [detainee] phobias and use them" and described for the group the so-called "wet towel" technique, which we know as waterboarding. Mr. Fredman said "it can feel like you're drowning. The lymphatic system will react as if you're suffocating, but your body will not cease to

function."

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

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

Nine days after that October 2, 2002, meeting, General Dunlavey, the Commander of Joint Task Force 170 at GTMO, sent a memo to U.S. Southern Command (TAB 8) requesting authority to use interrogation techniques which the memo divided into three categories of progressively more aggressive techniques. Category I was the least aggressive. Category II was more so and included the use of stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, deprivation of light and sound. Category III techniques included techniques like the so-called wet towel treatment, or "waterboard," that were the most aggressive. A legal analysis (TAB 8) by GTMO's Staff Judge Advocate, LTC Diane Beaver justifying the legality of the techniques, was sent with the request.

On October 25, 2002, General James Hill, the SOUTHCOM Commander forwarded General Dunlavey's request to the Chairman of the Joint Chiefs of Staff (TAB 9). Days later, the Joint Staff solicited the views of the military services on the GTMO request.

Military Lawyers Weigh in Against GTMO Request

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

- The Air Force (TAB 10) cited "serious concerns regarding the legality of many of the proposed techniques" and stated that "the techniques described may be subject to challenge as failing to meet the requirements outlined in the military order to treat detainees humanely…" The Air Force also called for an in depth legal review of the request.
- The Chief Legal Advisor to the Criminal Investigative Task Force at GTMO wrote

(TAB 11) that Category III techniques and certain Category II techniques "may subject service members to punitive articles of the UCMJ [Uniform Code of Military Justice]," called "the utility and legality of applying certain techniques" in the request "questionable," and stated that he could not "advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business."

- The Chief of the Army's International and Operational Law Division wrote (TAB 12) that techniques like stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress "crosses the line of 'humane' treatment," would "likely be considered maltreatment" under the UCMJ, and "may violate the torture statute." The Army labeled the request "legally insufficient" and called for additional review.
- The Navy response (TAB 13) recommended a "more detailed interagency legal and policy review" of the request.

- And the Marine Corps (TAB 14) expressed strong reservations, stating that "several of the Category II and III techniques arguably violate federal law, and would expose our service members to possible prosecution." The Marine Corps said the request was not "legally sufficient," and like the other services, called for "a more thorough legal and policy review."

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

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

Secretary of Defense Approves GTMO Request

Notwithstanding concerns raised by the military services, Department of Defense General Counsel Jim Haynes sent a memo (TAB 15) to Secretary of Defense Donald Rumsfeld on November 27, 2002, recommending that he approve all but three of the eighteen techniques in the GTMO request. Techniques like stress positions, removal of clothing, use of phobias (such as fear of dogs), and deprivation of light and auditory

stimuli were all recommended for approval.

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

Heated Discussions at GTMO about SERE and Khatani Interrogation

Discussions about "reverse engineering" SERE techniques for use in interrogations at GTMO had already prompted strong objections by the Department of Defense's Criminal Investigative Task Force (CITF) at GTMO. CITF Deputy Commander Mark Fallon said that SERE techniques were "developed to better prepare U.S. military personnel to resist interrogations and not as a means of obtaining reliable information" and that "CITF was troubled with the rationale that techniques used to harden resistance to interrogations would be the basis for the utilization of techniques to obtain information."

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

SOUTHCOM Commander General James Hill described the Khatani interrogation in a June 3, 2004 press briefing. He said: "The staff at Guantanamo working with behavioral scientists, having gone up to our SERE school and developed a list of techniques which our lawyers decided and looked at, said were OK." General Hill said "we began to use a few of those techniques . . . on this individual . . ."

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

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

played in that decision.

GTMO Develops SERE SOP – Navy SERE School Trainers Visit GTMO

In the week following the Secretary's December 2, 2002, authorization, senior staff at GTMO set to work drafting a Standard Operating Procedure (SOP) specifically for the use of SERE techniques in interrogations. The first page of one draft of that SOP (TAB 16) stated that "The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to 'break' SERE detainees. The same tactics and techniques can be used to break real detainees during interrogation." The draft described how to slap, strip, and place detainees in stress positions. It also described "hooding," "manhandling," and "walling" detainees.

When they saw the draft SOP, CITF and FBI personnel again raised a red flag. A draft of their comments on the SOP (TAB 17) said the use of aggressive techniques only "ends up fueling hostility and strengthening a detainee's will to resist." But those objections did not stop GTMO from taking the next step – training interrogators on how to use the techniques offensively.

On December 30, 2002, two instructors from the Navy SERE school arrived at GTMO (TAB 19). The following day, in a session with approximately 24 interrogation personnel, the two demonstrated how to administer stress positions, and various slaps – just like they do it in SERE school.

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

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

U.S. Navy General Counsel Objects to Interrogation Techniques

Two weeks earlier, on December 20, 2002, Alberto Mora had met with DoD General Counsel Jim Haynes. In a memo describing the meeting (TAB 18), Mr. Mora says he told Mr. Haynes that he thought interrogation techniques that had been authorized by the Secretary of Defense on December 2, 2002 "could rise to the level of torture" and asked him, "What did 'deprivation of light and auditory stimuli' mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What exactly did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in?"

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

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

Working Group Report on Detainee Interrogations

On January 15, 2003, the Secretary rescinded his December 2, 2002, authorization (TAB 20). At the same time, he directed the establishment of a "Working Group" to review interrogation techniques. What happened next has already become well known. For the next few months the judgments of senior military and civilian lawyers critical of legal arguments supporting aggressive interrogation techniques were rejected in favor of a legal opinion from Office of Legal Counsel's (OLC) John Yoo. The Yoo opinion (TAB 21), the final version of which was dated March 14, 2003, was requested by Jim Haynes, and repeated much of what the first Bybee memo had said six months earlier.

Mr. Mora, who was one of the Working Group participants, said that soon after the Working Group was established, it became evident the group's report "would contain profound mistakes in its legal analysis, in large measure because of its reliance on the

flawed [Office of Legal Counsel] OLC memo." In a meeting with Yoo, Mora asked whether the law allowed the President to go so far as to order torture. Yoo responded "Yes."

The August 1, 2002, Bybee memo, again, had said that to violate the federal anti-torture statute, physical pain that resulted from an act would have to be "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." John Yoo's March 14, 2003 memo stated that criminal laws, such as the federal anti-torture statute, would not even apply to certain military interrogations and that interrogators could not be prosecuted by the Justice Department for using interrogation methods that would otherwise violate the law. One CIA lawyer reportedly called the Bybee memo of August 2002 a "golden shield." Combining it with the Yoo memo of March 2003, the Justice Department had attempted to create a shield to make it difficult or impossible to hold anyone accountable for their conduct.

Ultimately the Working Group report, finalized in April 2003, included a number of aggressive techniques that were legal according to John Yoo's analysis. The full story of where the Working Group got those techniques remains classified. However, the list itself reflects the influence of SERE. Removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increasing anxiety through the use of a detainee's aversions like dogs, and face and stomach slaps were all recommended. Top military lawyers and service General Counsels had objected to these techniques as the report was being drafted. Those who had objected, like Navy General Counsel Alberto Mora, were simply excluded from the process and not even told that a final report had been issued.

On April 16, 2003, less than two weeks after the Working Group completed its report, the Secretary of Defense authorized the use of 24 specific interrogation techniques for use at GTMO (TAB 23). While the authorization included such techniques as dietary manipulation, environmental manipulation, and sleep adjustment, it was silent on most of the techniques in the Working Group report.

However, the Secretary's memo said that "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee."

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

Influence in Afghanistan

How did SERE techniques make their way to Afghanistan and Iraq? Shortly after the Secretary approved Jim Haynes's recommendation on December 2, 2002, the techniques – and the fact the Secretary had authorized them – became known to interrogators in Afghanistan. A copy of the Secretary's memo was sent from GTMO to Afghanistan. The Officer in Charge of the Intelligence Section at Bagram Airfield, in Afghanistan has said that in January 2003 she saw – in Afghanistan – a power point presentation listing the aggressive techniques authorized by the Secretary on December 2, 2002.

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

On January 24, 2003 – nine days after Rumsfeld's rescission – the Staff Judge Advocate for CJTF-180, CENTCOM's conventional forces in Afghanistan, produced an "Interrogation techniques" memo. While that memo remains classified, the unclassified version of a report by Major General George Fay stated that the CJTF-180 memo "recommended removal of clothing – a technique that had been in the Secretary's December 2 authorization" and discussed "exploiting the Arab fear of dogs" another technique approved by the Secretary on December 2, 2002.

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

"influenced by the counterresistance memorandum that the Secretary of Defense approved on December 2, 2002 and incorporated techniques designed for detainees who were identified as unlawful combatants. Subsequent battlefield interrogation SOPs included techniques such as yelling, loud music, and light control, environmental

manipulation, sleep deprivation/adjustment, stress positions, 20-hour interrogations, and controlled fear (muzzled dogs) . . ."

Special mission unit techniques eventually made their way into Standard Operating Procedures issued for all U.S. forces in Iraq. The Interrogation Officer in Charge at Abu Ghraib obtained a copy of the special mission unit interrogation policy and submitted it, virtually unchanged, to her chain of command as proposed policy for the conventional forces in Iraq, led at the time by Lieutenant General Ricardo Sanchez.

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

In the report of his investigation into Abu Ghraib, Major General George Fay said that interrogation techniques developed for GTMO became "confused" and were implemented at Abu Ghraib. Major General Fay said that removal of clothing, while not included in CJTF-7's SOP, was "imported" to Abu Ghraib, could be "traced through Afghanistan and GTMO," and contributed to an environment at Abu Ghraib that appeared "to condone depravity and degradation rather than humane treatment of detainees." Following a September 9, 2004 Committee hearing on his report, I asked Major General Fay whether the policy approved by the Secretary of Defense on December 2, 2002 contributed to the use of aggressive interrogation techniques at Abu Ghraib, and he responded "Yes."

JPRA Support to the Special Mission Unit Task Force In Iraq

Not only did SERE resistance training techniques make their way to Iraq, but instructors from the JPRA SERE school followed. The Department of Defense Inspector General reported that in September 2003, at the request of the Commander of the Special Mission Unit Task Force, JPRA deployed a team to Iraq to provide assistance to interrogation operations. During that trip, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody. Accounts of that trip will be explored at a later time.

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

JFCOM Statement on JPRA Roles and Responsibilities

Major General James Soligan, the Chief of Staff of the U.S. Joint Forces Command

(JFCOM), which is the Joint Personnel Recovery Agency's higher headquarters (TAB 24), issued a memorandum referencing JPRA's support to interrogation operations. Soligan wrote that:

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

Lieutenant General Robert Wagner, the Deputy Commander of JFCOM, has likewise said that (TAB 25) "Relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations – not in how to conduct interrogations… requests for JPRA 'interrogation support' were both inconsistent with the unit's charter and might create conditions which tasked JPRA to engage in offensive operational activities outside of JPRA's defensive mission."

The Department of Defense Inspector General report completed in August 2006 said techniques in Iraq and Afghanistan had derived, in part from JPRA and SERE.

Closing

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

"Our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy. This fight depends on securing the population, which must understand that we – not our enemies – occupy the moral high ground.

I fully appreciate the emotions that one experiences in Iraq. I also know firsthand the bonds between members of the 'brotherhood of the close fight.' Seeing a fellow trooper killed by a barbaric enemy can spark frustration, anger, and a desire for immediate revenge. As hard as it might be, however, we must not let these emotions lead us – or our comrades in arms – to commit hasty, illegal actions. In the event that we witness or hear of such actions, we must not let our bonds prevent us from speaking up. Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic

fact that such actions are illegal, history shows that they also arc frequently neither useful nor necessary.

We are, indeed, warriors. We train to kill our enemies. We are engaged in combat, we must pursue the enemy relentlessly, and we must be violent at times. What sets us apart from our enemies in this fight, however, is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect. While we are warriors, we are also all human beings."

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Part II of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody

In June 2008, this Committee held a hearing on the origins of aggressive interrogation techniques used against detainees in U.S. custody at Guantanamo, Abu Ghraib, and elsewhere. At that hearing, the Committee heard how techniques such as stress positions, forced nudity, and sleep deprivation – used in military Survival Evasion Resistance and Escape or "SERE" training to teach U.S. personnel to resist abusive interrogations, and based, in part, on Chinese Communist techniques used during the Korean war to elicit false confessions – were turned on their head and authorized at senior levels of our government for use in interrogations of detainees in U.S. custody. Today's hearing will cover one way that those techniques made their way to Iraq.

While some have claimed that detainee abuses at Abu Ghraib and elsewhere were simply the result of a few bad apples acting on their own, at our June hearing we heard that as far back as December 2001, senior Department of Defense officials, including from General Counsel William J. "Jim" Haynes's office, sought out information from the Joint Personnel Recovery Agency (JPRA), the DoD agency responsible for overseeing SERE training. We heard how, when he later reviewed a request from Guantanamo Bay (GTMO) to use techniques similar to those used in SERE training, Mr. Haynes ignored strong concerns from the military services that some of the techniques were illegal, cut short an effort by the Legal Counsel to the Chairman of the Joint Chiefs of Staff to conduct a legal and policy review of the techniques, and recommended that the Secretary of Defense approve most of them for use against detainees. In December 2002, Secretary Rumsfeld approved Mr. Haynes's recommendation, sending the message that stripping detainees, placing them in stress positions, and using dogs to intimidate them was acceptable. Policies authorizing some of those same abusive techniques in Afghanistan and Iraq followed the Secretary's decision. We'll hear this morning how one military commander in Iraq sought and obtained interrogation support from JPRA, an agency whose expertise, again, is in teaching soldiers to resist abusive interrogations conducted by our enemies.

We'll hear from Colonel Steven Kleinman, the former Director of Intelligence at the JPRA's Personnel Recovery Academy and retired Colonel John R. Moulton II, former Commander, JPRA. Both witnesses have been cooperative with the Committee's inquiry and I thank them for their appearance here today.

Some new information and recently declassified documents provide further insight into

the extent to which SERE resistance training techniques influenced detainee interrogations conducted by U.S. personnel and the role of senior officials in approving policies authorizing the use of those techniques against detainees.

At our June 17th hearing, we heard that the Department of Defense General Counsel's office, led by Jim Haynes, sought advice from JPRA as far back as December 2001. Specifically, in mid-December 2001, Deputy General Counsel for Intelligence Richard Shiffrin solicited information from JPRA on detainee "exploitation." JPRA Chief of Staff Lieutenant Colonel Daniel Baumgartner responded to Mr. Shiffrin's call with a six page fax. An unclassified fax cover sheet addressed to Mr. Shiffrin and dated December 17, 2001 [TAB 1] states that the document provided JPRA's "spin on exploitation" and that if the General Counsel's office needed "experts to facilitate this process" that JPRA stood "ready to assist." That December 2001 call from Mr. Shiffrin appears to have been JPRA's first foray into "offensive" interrogation operations, but other efforts soon followed.

On April 16, 2002, Dr. Bruce Jessen, who was then the senior SERE psychologist at JPRA, circulated a draft "exploitation plan" to JPRA Commander Colonel Randy Moulton and other senior officials at the agency. Emails exchanged between Dr. Jessen and Colonel Moulton [TAB 2] suggest that JPRA intended to seek approval of the exploitation plan.

Also in the spring of 2002, the CIA sought approval from the National Security Council (NSC) to begin an interrogation program for high-level al-Qaida detainees. In a written response to questions I sent her in July 2008, Secretary of State Condoleezza Rice, who was then the National Security Advisor to the President, responded on September 12th that, in 2002 and 2003 there were meetings at the White House where specific CIA interrogation techniques were discussed. [TAB 3] I also asked Secretary Rice whether she attended meetings where SERE training was discussed. Secretary Rice responded that that she recalled being told that U.S. military personnel were subjected in training to "physical and psychological interrogation techniques." Her legal advisor at the time, John Bellinger, said in his September 12th written answers to my questions that he was present in meetings at the White House or the Eisenhower Executive Office Building "at which SERE training was discussed." [TAB 4]

Secretary Rice also wrote in her September 12th response that John Yoo, Deputy Assistant Attorney General at the Department of Justice's Office of Legal Counsel (OLC), provided legal advice at "several" meetings that she attended and that the Department of Justice's advice on the program "was being coordinated by Counsel to the President

Alberto Gonzales." She wrote that CIA's interrogation program was reviewed by NSC Principals and that Secretary of Defense Donald Rumsfeld participated in that review. Secretary Rice said that when CIA sought approval of the interrogation program she asked Director of Central Intelligence George Tenet to brief the Principals and asked Attorney General John Ashcroft to "personally advise NSC Principals whether the program was lawful." Mr. Bellinger, her Legal Advisor, wrote that he asked CIA lawyers to seek legal advice not only from the OLC, but also from the Criminal Division of the Department of Justice, headed at the time by Michael Chertoff.

The meetings referred to by Secretary Rice and Mr. Bellinger were not meetings between low-level bureaucrats. These were the most senior officials in the United States government, advisors to the President, meeting in the White House.

Mr. Bellinger said that some of the legal analyses of proposed interrogation techniques that were prepared by the Department of Justice referred to "the psychological effects of military resistance training" and that during the 2002-2003 timeframe, he "expressed concern that the proposed CIA interrogation techniques comply with applicable U.S. law, including our international obligations."

At our June 17th hearing, the Committee heard that in July 2002, prompted by a request from DoD General Counsel Jim Haynes, Deputy General Counsel for Intelligence Richard Shiffrin called JPRA and asked for a list of physical and psychological pressures used in SERE training. In response to that request, on July 26, 2002, JPRA provided a list of techniques that included stress positions, waterboarding, slapping, sleep disruption, and sensory deprivation. The JPRA list also made reference to a section of the JPRA manual that talks about "coercive pressures," like treating a person like an animal. Mr. Shiffrin testified that part of the reason the General Counsel's office sought the information was its interest in reverse-engineering the techniques for use offensively in detainee interrogations.

At that hearing we also heard that in October 2002, Major General Michael Dunlavey, the Commander at Guantanamo, requested authority to use some of the same SERE resistance training techniques that had been on the list JPRA provided to Mr. Haynes's office in July.

The military services registered serious concerns about the legality of some of the techniques in Major General Dunlavey's request and Rear Admiral Jane Dalton, who was the Legal Counsel to the Chairman of the Joint Chiefs of Staff, testified that she initiated a broad based legal and policy review of the request. But, at Mr. Haynes's request, her

review was cut short by General Richard Myers, the Chairman of the Joint Chief of Staff. Mr. Haynes subsequently recommended that Secretary of Defense Donald Rumsfeld approve most of the techniques in Major General Dunlavey's request. Again, on December 2, 2002 Secretary Rumsfeld approved Mr. Haynes's recommendation, authorizing the use of aggressive interrogation techniques at GTMO, including stress positions, instilling fear through the use of dogs, and removal of clothing.

At the June 17th hearing, we heard from then-Navy General Counsel Alberto Mora about concerns he raised in December 2002 and January 2003 with Mr. Haynes about interrogations at GTMO. We learned from John Bellinger, the NSC legal advisor, in his September 12th response to my questions, that on several occasions, Deputy Assistant Attorney General Bruce Swartz raised concerns with him about allegations of detainee abuse at GTMO. Mr. Bellinger wrote to me that he, in turn, raised these concerns "on several occasions with DoD officials." In her September 12th response, Secretary Rice wrote that Mr. Bellinger also advised her "on a regular basis regarding concerns and issues relating to DoD detention policies and practices at Guantanamo." She wrote that as a result she convened a "series of meetings of NSC Principals in 2002 and 2003 to discuss various issues and concerns relating to detainees in the custody of the Department of Defense."

At our last hearing, I described how aggressive techniques authorized by the Secretary of Defense for use at GTMO made their way to Afghanistan and Iraq. Many of those same techniques were authorized by senior military commanders. For instance, on September 14, 2003 Lieutenant General Ricardo Sanchez, the Commander of Combined Joint Task Force 7 in Iraq, authorized the use of dogs, stress positions, and other aggressive techniques in interrogations.

In the summer of 2003 the Commander of a special mission unit Task Force in Iraq went further. He contacted JPRA for help with interrogations. Again, JPRA's expertise is in training soldiers to resist abusive interrogations by enemies that refuse to follow the Geneva Conventions. In response to the Commander's request, and with explicit approval from the U.S. Joint Forces Command, JPRA's higher headquarters, JPRA sent an interrogation support team to Iraq. Colonel Kleinman was the team leader during that visit.

Here's some of what we know about the Iraq trip from unclassified or declassified sources. The Task Force's request for JPRA "interrogator support" was submitted through official channels and was approved by JFCOM on August 27, 2003. JPRA put together a three person team to support the request. On September 4, 2003, just as the

JPRA team was arriving in Iraq, Lieutenant General Robert Wagner, the Deputy Commander of the U.S. Joint Forces Command, JPRA's senior command, sent an email to Colonel Moulton, the JPRA Commander, about the trip asking, what in JPRA's "charter places JPRA in the business of intelligence collection?" [TAB 5] Again, just a week earlier, JFCOM had approved the trip. Colonel Moulton replied to Lieutenant General Wagner's email that "there is nothing in our charter or elsewhere that points us toward the offensive side of captivity conduct" and that JPRA was "well aware of the problems associated with crossing the Rubicon into intel collection (or anything close)."

A second email from Colonel Moulton, however, sent on September 9, 2003 to the JFCOM Director of Operations, stated that "recent history (to include discussions and training with [DIA], USSOCOM, CIA) shows that no DoD entity has a firm grasp on any comprehensive approach to strategic debriefing/interrogation. Our subject matter experts (and certain SERE psychologist) currently have the most knowledge and depth within DoD on the captivity environment and exploitation." While Colonel Moulton's email said that JPRA was "NOT looking to expand our involvement to active participation" he noted that JPRA's "potential participation is predicated solely on the request of the Combatant Commander."

A recently declassified summary of a 2005 interview with Colonel Moulton [TAB 6] and Colonel Moulton's prepared statement for today's hearing both describe conversations he had with Colonel Kleinman while the JPRA team was in Iraq. Colonel Moulton acknowledges telling Colonel Kleinman that the JPRA team was authorized to participate in interrogations using SERE training techniques. Colonel Moulton said he granted that authority only after seeking approval from JFCOM. Colonel Kleinman has said that he objected to the use of SERE training techniques during the trip and that he told Colonel Moulton both that those techniques were inconsistent with the Geneva Conventions and that granting authority for the team to use them was an illegal order. This morning we will hear both Colonel Moulton's and Colonel Kleinman's account of those conversations and events that occurred during that trip.

Towards the end of their trip, members of the JPRA team produced a draft Concept of Operations or "CONOP" for the interrogation of detainees. Emails from Captain Daniel Donovan, U.S. Joint Forces Command's Staff Judge Advocate, reveal some of what the CONOP proposed and what JPRA thought was acceptable.

Captain Donovan, in a September 26, 2003 email to Colonel Moulton and others at JPRA [TAB 7], raised a concern that techniques proposed in the CONOP would "not be legal under the Geneva Conventions." A few days later in an email to JFCOM leadership [TAB

8] Captain Donovan reiterated his concern stating that "a number of the 'interrogation techniques' suggested by JPRA in their draft CONOP are highly aggressive (such as the 'water board'), and it probably goes without saying that if JPRA is to include such techniques in a CONOP they prepare for an operational unit in another [area of responsibility], they need to be damn sure they're appropriate in both a legal and policy sense." Captain Donovan added "JPRA got its list of techniques from a DOD General Counsel Working Group Report dated 6 Mar 03, so I'm sure they felt that their list might have already been 'blessed' by Pentagon lawyers."

The Working Group referred to by Captain Donovan's email had been established at Secretary Rumsfeld's direction in January 2003. As the Committee heard at our June 17th hearing, over the strong objections of senior military lawyers, the Working Group relied on a March 14, 2003 legal opinion from the Department of Justice's Office of Legal Counsel (OLC) written by John Yoo. The Working Group's final report, issued on April 4, 2003, recommended several aggressive techniques including removal of clothing, prolonged standing, sleep deprivation, dietary manipulation, hooding, increasing anxiety through the use of a detainee's aversions like dogs, and face and stomach slaps. While the final Working Group report did not mention SERE, many of the techniques it recommended were strikingly similar to techniques used in JPRA SERE training.

Captain Donovan's email said that that the techniques approved by Secretary Rumsfeld for use at GTMO in April 2003 were not the same as those in the Working Group report and said that what the Secretary had approved was more restrictive. As we heard at our June 17th hearing, Secretary Rumsfeld's April 2003 memo to U.S. Southern Command (SOUTHCOM), GTMO's higher headquarters, was silent on most of the techniques in the Working Group's report. The Secretary's memo said that if techniques, beyond 24 that he specifically authorized, were required, SOUTHCOM should "provide a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee." We heard at our last hearing that one such request arrived at the Pentagon just a few months later and was approved by the Secretary.

Secretary of Defense Rumsfeld's original December 2, 2002, authorization of aggressive interrogation techniques including stress positions, use of dogs and removing detainees clothing and his Working Group's April 2003 recommendation of many other aggressive techniques, conveyed the message that senior officials felt that physical pressures and degrading tactics were appropriate for use during interrogations of detainees in U.S. military custody. Many of the aggressive techniques the Secretary approved in December 2002, including the three I just mentioned - stripping detainees, putting them

in stress positions and using dogs to intimidate them - were used against detainees at Abu Ghraib.

But even the public disclosure of abuses at Abu Ghraib apparently did not eliminate interest in using SERE specialists to provide advice on interrogations. The Department of Defense Inspector General said in its 2006 report that it was only after a request to send a JPRA team to Afghanistan in 2004 that JFCOM finally issued guidance that the use of SERE for "'offensive' purposes lies outside the roles and responsibilities of JPRA." [TAB 10]