

**HEARING TO RECEIVE TESTIMONY ON THE
ORIGINS OF AGGRESSIVE INTERROGATION
TECHNIQUES: PART I OF THE COMMITTEE'S
INQUIRY INTO THE TREATMENT OF DE-
TAINEES IN U.S. CUSTODY (A.M. SESSION)**

Tuesday, June 17, 2008

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

The committee met, pursuant to notice, at 9:34 a.m. in Room SD-106, Dirksen Senate Office Building, Hon. Carl Levin, chairman of the committee, presiding.

Committee Members Present: Senators Levin [presiding], Lieberman, Reed, Akaka, Bill Nelson, Ben Nelson, Pryor, Webb, McCaskill, Warner, Inhofe, Sessions, Collins, Chambliss, Graham, Dole, Cornyn, Thune, and Martinez.

Committee staff members present: Richard D. DeBobes, Staff Director, and Leah C. Brewer, Nominations and Hearings Clerk.

Majority staff members present: Joseph M. Bryan, Professional Staff Member, Ilona R. Cohen, Counsel, Mark R. Jacobson, Professional Staff Member, Gerald J. Leeling, Counsel, Peter K. Levine, General Counsel, William G. P. Monahan, Counsel, and Michael J. Noblet, Professional Staff Member.

Minority staff members present: Michael V. Kostiw, Republican Staff Director, William M. Caniano, Professional Staff Member, David G. Collins, Research assistant, David M. Morriss, Minority Counsel, and Dana W. White, Professional Staff Member.

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

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

Chambliss, Jennifer Olson, assistant to Senator Graham, Lindsey Neas, assistant to Senator Dole, David Hanke, assistant to Senator Cornyn, Jason Van Beek, assistant to Senator Thune, and Erskine W. Wells, III, assistant to Senator Wicker.

**OPENING STATEMENT OF HON. CARL LEVIN, U.S. SENATOR
FROM MICHIGAN**

Chairman LEVIN. Good morning, everybody.

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

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

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

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

Today's hearing will explore how it came about that the techniques, called "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 interrogation.

Some brief background on SERE, which stands for Survival Evasion Resistance and Escape, training. The United States military has five SERE schools to teach certain military personnel, whose

missions create a high risk that they might be captured, the skills needed to survive in hostile enemy territory, evade capture, and escape, should they be captured. The resistance portion of SERE training exposes students to physical and psychological pressures designed to simulate abusive conditions to which they might be subject if taken prisoner by enemies that may abuse them.

The Joint Personnel Recovery Agency, JPRA, is the DOD agency that oversees SERE training. JPRA's Instructor Guide states that a purchase of using physical pressures in training is, quote, "stress inoculation," building soldiers' immunities so that they, should they be captured and be subject to harsh treatment, be better able 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 temperature. It can also include face and body slaps, and, until recently, for some sailors who attended the Navy's SERE school, it included water boarding, which is mock drowning.

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

There are explicit limitations on the duration and intensity of physical pressures. For example, when water boarding was permitted at the Navy SERE school, the instructor manual stated that a maximum of 2 pints of water could be used on a student who was being water boarded, 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, quote, "The expertise of JPRA lies in training personnel how to respond and resist interrogations, not in how to conduct interrogations." Now, that is a fundamental, important distinction.

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

It also weakens our moral authority and harms our efforts to attract allies to our side in the fight against terrorism.

So, how did SERE techniques come to be considered by DOD for detainee interrogation? In July of 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- chief of staff at JPRA, which is the agency that oversees the SERE training, and asked for information on SERE techniques. In response to Mr. Shiffrin's request, Lieutenant Colonel Baumgartner drafted a 2-page memo and compiled several documents, including excerpts from SERE instructor lesson plans, and he attached to his memo, saying that JPRA would, quote, "continue to offer exploitation assistance to those government organizations charged with the mission of gleaning intelligence from enemy detainees," close quote. The memo was hand-delivered to the General Counsel's Office on July 25th, 2002.

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

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

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

On August 1st, 2002, a week after Lieutenant Colonel Baumgartner sent his memo to the DOD general counsel, the Department of Justice's Office of Legal Counsel issued two legal opinions. One, commonly known as the first Bybee Memo, was addressed to the then-White House counsel, Alberto Gonzales, and provided OLC's opinion on standards of conduct in interrogation required under the Federal Torture Statute. The memo concluded that, quote, "For an act to constitute torture as defined in the statute, it must inflict pain that is difficult to endure; physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under the Federal Torture Statute, it must result in significant psychological harm of significant duration; e.g., lasting for months or even years."

The other OLC opinion, issued the same and known 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, said that the water board was one

of the techniques that the CIA used with detainees. Stephen Bradbury, the current assistant attorney general for the OLC, testified before the House Judiciary Committee earlier this year, that, quote, "CIA's use of water-boarding procedure was adapted from the SERE training program."

During the time the DOD General Counsel's Office was seeking information from JPRA, JPRA staff, responding to a request from Guantanamo, 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 16th, 2002, a group from GTMO, including interrogators and behavioral scientists, traveled to Fort Bragg, North Carolina, and attended training conducted by instructors from the JPR SERE school. None of the three JPR personnel—JPRA personnel who provided the training was a trained interrogator.

On September 25th, just days after the GTMO staff returned from that training, a delegation of senior administration lawyers, including Jim Haynes, general counsel for 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 of the Department of Justice, visited Guantanamo. An after-action report produced by a military lawyers after the visit noted that one purpose of the trip was to receive briefings on intel techniques.

On October 2nd, 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 Guantanamo, attended a meeting of GTMO staff, and discussed a memo proposing the use of aggressive interrogation techniques. That memo had been drafted by a psychologist and psychiatrist from GTMO who, a couple of weeks earlier, had attended that training, given at Fort Bragg by instructors by the SERE school.

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

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

Mr. Fredman, the senior CIA lawyer, suggested that it's, quote, "very effective to identify detainee phobias, and to use them," and described to the group the so-called wet-towel technique, which we know as water boarding. Mr. Fredman said, quote, "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," close quote. And Mr. Fredman presented the following disturbing perspective our legal obligations under our anti-torture laws, saying, quote, "It is basically subject to perception. If the detainee dies, you're doing it wrong." "If the detainee dies, you're doing it wrong." How on earth did we get to the point where a senior U.S. Government lawyer

would say that whether or not an interrogation technique is torture is, quote, “subject to perception,” and that if, quote, “the detainee dies, you’re doing it wrong”?

The GTMO senior JAG officer Lieutenant Colonel Beaver’s response was, “We’ll need documentation to protect us.”

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

A legal analysis by GTMO’s staff judge advocate, Lieutenant Diane Beaver—Lieutenant Colonel Diane Beaver—justifying the legality of the techniques, was sent with that 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. Nine days later, the Joint Staff solicited the view of the military services on the GTMO request.

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

The Air Force cited, quote, “serious concerns regarding the legality of many of the proposed techniques,” and stated that, quote, “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 that category-3 techniques and certain category-2 techniques may, quote, “subject service members to punitive articles of the UCMJ,” and called, quote, “the utility and legality of applying certain techniques in the request,” quote, “questionable,” and stated that he could not advocate, quote, “any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are now aware of how we conduct our business,” close quote.

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, quote, “crosses the line of humane treatment,” close quote, and, quote, “would likely be considered maltreatment under the UCMJ, and may violate the Torture Statute.” The Army labeled the request legally insufficient and called for additional review.

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

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

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

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

When the Joint Staff received the military services’ concerns, Rear Admiral Jane Dalton, then-legal advisor to the Chairman of the 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 Rear Admiral Dalton about that.

Notwithstanding concerns raised by the military services, Department of Defense General Counsel Jim Haynes sent a memo to Secretary of Defense Donald Rumsfeld on November 27th, 2002, recommending that he approve all but three of the 18 techniques in the GTMO request. Techniques like stress positions, removal of clothing, use of phobias, such as fear of dogs, and deprivation of light and auditory stimuli were all recommended for approval.

Five days later, on December 2nd, 2002, Secretary Rumsfeld signed Mr. Haynes’s recommendation, adding the handwritten note, “I stand for 8 to 10 hours a day, why is standing limited to 4 hours?”

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

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

In the week following the Secretary’s December 2nd, 2002, authorization, senior staff at GTMO set to work drafting a standard operating procedure specifically for the use of SERE techniques in interrogations. The first page of one draft of that standard operating procedure stated that, quote, “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,” close quote. 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 standard operating procedure, the CITF and FBI personnel again raised a red flag. A draft of their com-

ments on the standard operating procedure said that the use of aggressive techniques only, quote, “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 techniques offensively.

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

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

Now, 2 weeks earlier, on December 20, 2002, Alberto Mora, who’s a witness here today, had met with Department of Defense General Counsel Jim Haynes. In a memo describing that meeting, Mr. Mora says that he told Mr. Haynes that he thought that interrogation techniques that had been authorized by the Secretary of Defense on December 2, 2002, quote, “could rise to the level of torture,” close quote, and he asked them, quote, “What did deprivation of light and auditory stimuli mean? Could a detainee be locked in a completely dark cell? And for 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?” close quote.

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

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

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

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

What happened next has already become well known. For the next few months, the judgments of senior military and civilian lawyers critical of legal arguments supporting aggressive interrogation techniques were rejected in favor of a legal opinion from the Office of Legal Counsel's John Yoo. The Yoo opinion, the final version of which was dated March 14th, 2003, was requested by Jim Haynes and repeated much of what the first Bybee Memo had said, 6 months earlier. Mr. Mora, who was one of the working-group participants, said that soon after the working group was established it became evident that the group's report, quote, "would contain profound mistakes in its legal analysis, in large measure because of its reliance on the flawed OLC memo," close quote.

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

The August 1, 2002, Bybee memo, again, had said that to violate the Federal Anti-Torture Statute, physical pain that resulted from an act would have to be, quote, "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 14th, 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 reported called the Bybee memo of August 2002 a "golden shield." Combining it with the Yoo memo of March '03, 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 of '03, 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 counsel had objected to these techniques as the report was being drafted. Those who had objected, like Navy General Counsel Alberto Mora, were simply excluded from the process, not even told that a final report had been issued.

On October 16, 2003, less than 2 weeks after the working group completed its report, the Secretary of Defense authorized the use of 24 specific interrogation techniques for use at GTMO. While the authorization included such techniques as dietary manipulation, environmental manipulation, and sleep adjustment, it was silent on most of the techniques in the working-group report. However, the Secretary's memo said that, quote, "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, recommending

safeguards, and the rationale for applying it with an identified detainee.”

Now, how did SERE techniques make their way to Afghanistan and Iraq? Shortly after the Secretary approved Jim Haynes’s recommendation, on December 2, 2002, the techniques and the fact that the Secretary had authorized them became known to interrogators in Afghanistan. A copy of the Secretary’s memo was sent from GTMO to Afghanistan. The officer in charge of the intelligence section at Baghram Air Field in Afghanistan has said that, in January of ’03, she saw, in Afghanistan, a PowerPoint presentation listing the aggressive techniques authorized by the Secretary on December 2, 2002. Documents and interviews also indicate that the influence of the Secretary’s approval of aggressive interrogation techniques survived their January 15th, 2003, rescission.

On January 24th, 2003, nine days after Secretary 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, quote, “recommended removal of clothing,” a technique that had been in Secretary—the Secretary’s December 2 authorization—and discussed exploiting Arab fear of dogs, another technique approved by the Secretary on December 2nd, 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, quote, “used a January 2003 standard operating procedure which had been developed for operations in Afghanistan.” According to the DOD IG, the Afghanistan standard operating procedure had been, quote, “influenced by the counter-resistance memorandum that the Secretary of Defense approved on December 2, 2002, and incorporated techniques designed for detainees who were identified as unlawful combatants. Subsequent battlefield interrogation standard operating procedures 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,” close quote.

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 14th, 2003, General Sanchez issued the first Combined Joint Task Force 7 interrogation standard operating procedure. That procedure 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, quote, “confused and were implemented at Abu Ghraib.” Major General Fay said that removal of clothing, while not included in CJTF-7’s procedures, was imported to Abu Ghraib, and

could be traced, quote, “through Afghanistan and GTMO,” close quote, and contributed to an environment at Abu Ghraib that appeared to, quote, “condone depravity and degradation rather than humane treatment of detainees,” close quote.

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 2nd, 2002, contributed to the use of aggressive interrogation techniques at Abu Ghraib, and he responded, “Yes.”

Not only did SERE resistance training techniques make their way to Iraq, but instructors from JPRA’s SERE school followed. The Department of Defense inspector general reported that, in September of 2003, at the request of the commander of the Special Mission Unit Task Force, JPRA deployed a team to Iraq to provide assistance to interrogation operations. During that trip, SERE instructors were authorized to participate in the interrogation of detainees in U.S. military custody. Accounts of that trip will be explored at a later time, and I’ll be sending a letter to the Department of Defense asking that those accounts and other documents relating to JPRA’s interrogation-related activities be declassified.

Major General James Soligan, the chief of staff of the U.S. Joint Forces Command, JFCOM, which is the Joint Personnel Recovery Agency’s higher headquarters, issued a memorandum referencing JPRA’s support to interrogation operations. Soligan wrote that, quote, “Recent requests from the Office of the Secretary of Defense and 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,” he said, “go beyond the chartered responsibilities of JPRA. The use of resistance to interrogation knowledge for offensive purposes lies outside the roles and responsibilities of JPRA.”

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

The Department of Defense’s inspector general’s report, completed in August of ’06, said that the techniques in Iraq and Afghanistan had derived, in part, from JPRA and SERE.

Many have questioned why we should care about the rights of detainees. On May 10th, 2007, General David Petraeus answered that question in a letter to his troops. And this is what General Petraeus wrote, “Our values and the laws governing warfare teach us to respect human dignity, maintain our integrity, and do what is right. Adherence to our values distinguishes us from our enemy. This fight depends on securing the population, which must understand that we, not our enemies, occupy the moral high ground.”

And he continued, “I fully appreciate the emotions that one experiences in Iraq. I also know firsthand the bonds between members

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

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

Senator Warner has asked Senator Graham to be the acting ranking member today, I believe, and so, I would call—

STATEMENT OF JOHN A. WARNER, U.S. SENATOR FROM VIRGINIA

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

I would like to say, Mr. Chairman, that we’ve got to look at this situation in the context of the aftermath of 9/11, when this country was struggling to come to a full recognition about our vulnerability to attacks such as we experienced on that fateful day. And I think men and women in uniform, as well as in the civilian community, did everything we could to try and preserve and protect our great Nation, a nation that is founded under the rule of law; and there should be no deviation from that.

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

Chairman LEVIN. Well, of course, we have—would request, if it’s appropriate, that information be declassified, but we cannot receive classified information at this hearing.

Senator WARNER. Absolutely. I see.

Well, let’s also reflect on the fact that in April 2004 through 2006 this committee, recognizing there were problems in this area, conducted 17 hearings and briefings with regard to military—to detainee abuse, military commissions, and the new Army Field Manual. That was largely out of the Abu Ghraib. You and I worked to—

gether on that, Mr. Chairman, and that led to the Detainee Treatment Act. So, I think this committee has a long record, both under Republican control and Democratic control, to examine this matter.

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

Senator Graham?

**STATEMENT OF HON. LINDSEY O. GRAHAM, U.S. SENATOR
FROM SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman.

And thank you, to the witnesses, for testifying before us today.

Let me begin by saying I have made it clear a long time ago that I believed administration lawyers used bizarre legal theories to justify harsh interrogation techniques. I've also been troubled by the fact that they implemented these procedures over the strenuous objections of military lawyers and many others with expertise in these areas.

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

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

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

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

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

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

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

After we invaded Iraq, we underestimated the threat of an insurgency, and we were slow to adapt to the situation on the ground. We were ill-equipped to manage Abu Ghraib, and perplexed by what to do with unlawful combatants in Afghanistan.

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

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

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

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

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

Mr. Haynes, who will come before the committee today, wrote, in an official document, that water boarding "may be legally available" to the military; never mind the fact that it is clearly prohibited under the Uniform Code of Military Justice.

As a personal aside, Mr. Chairman, one of the great concerns I've had about this whole process is the legal exposure that you place men and women in uniform if they go down this road. The Uniform

Code of Military Justice could not be more clear when it comes to the guidelines and guidance provided to those in uniform regarding detainees.

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

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

I would just add that these treaties that we're talking about, the Convention Against Torture, signed by Ronald Reagan, has served this country and the world well. And would we sit on the sidelines if some executive in another country said, "I have the inherent authority, because my nation is at risk, to set this treaty aside"? Would we object if some airman were in the hands of a nation-state and the executive of that nation said, "Even though I signed up to the Geneva Convention, I believe I have the inherent authority to protect my people, to set it aside, in this case"? If we go down that road, the law means nothing.

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

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

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

In the same bill, the Detainee Treatment Act, the Army Field Manual became the standard for all Department of Defense inter-

rogations. With the passage of the Military Commissions Act, we have ensured that all of our interrogators are fully compliant with the Convention Against Torture, Common Article 3 of the Geneva Conventions, and the War Crimes Statute. The Military Commissions Act put in place procedures that our Nation could be proud of when it comes to prosecuting detainees for war crimes.

I deeply regret that—the Supreme Court ruling providing a constitutional right of habeas corpus to noncitizen terror suspects. I think this is a very bad decision for America. I think the American people are going to be deeply disturbed to learn that the mastermind of 9/11, Khalid Sheikh Mohammed, has the same constitutional rights as they do. As Chief Justice Roberts argued in his dissenting opinion, “So, who has won? Not the detainees. The Court’s analysis leaves them with only the prospect of future litigation to determine the content of their new habeas right, followed by further litigation to resolve their particular cases, followed by further litigation before the D.C. Circuit, where they could have started, had they invoked the Detainee Treatment Act procedure. Not Congress, whose attempt to determine through democratic means how best to balance the security of the American people with the detainee’s liberty interests has been unceremoniously brushed aside. Not the Great Writ, whose majesty is hardly enhanced by the extension to a jurisdictional quirky outpost with no tangible benefit to anyone. Not the rule of law, unless by that it is meant the rule of lawyers, who will now have—arguably have a greater role than military and intelligence officials in shaping policy for alien enemy combatants. And certainly not the American people, who today lose a bit more control over the conduct of this Nation’s foreign policy to unelected, politically unaccountable judges.”

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

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

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

So, respectfully, Mr. Chairman, we’re not making—breaking new ground here. The abuses, the inconsistencies, the pattern of poor judgment in these matters are well documented. The fact that we

have come a long way—the fact is that we have come a long way in the past 5 years. Secretary Rumsfeld is gone. Wolfowitz, Cambone, and Feith are all gone. John Yoo and Jim Haynes are gone. I look forward to hearing from the witnesses today. I hope that we can continue to try to find a way to protect our Nation that recognizes, even though that we're at war, we must operate within the bounds of the laws and the treaties that make our Nation strong.

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

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

Our first panel today consists of Mr. Richard Shiffrin, who's the former deputy general counsel for intelligence at the Department of Defense; retired Lieutenant Colonel Dan Baumgartner, who is the former chief of staff of the Joint Personnel Recovery Agency, JPRA; and Dr. Jerry Ogrisseg, former chief of psychology services at the U.S. Air Force Survival School.

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

Mr. Shiffrin?

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

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

Chairman LEVIN. Thank you, Mr. Shiffrin.

And next, we would call upon retired Lieutenant Colonel Dan Baumgartner.

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

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

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

I served on Active Duty as an officer in the United States Air Force from 1979 to 2003, and from 1990 I was assigned to the Air Force Survival School. From then until my retirement ceremony in March 2004, I've served in a variety of capacities involving the Department of Defense Personnel Recovery Mission. My final assignment, from 1998 until May of 2003, was as the chief of staff to the Joint Personnel Recovery Agency, also referred to by its acronym, JPRA.

The JPRA is the United States Joint Forces Command's office of primary responsibility for the Department of Defense Personnel Recovery Mission.

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

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

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

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

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

The briefings were designed to assist the Army in training Army psychologists and other mental health personnel on what it would mean to be assigned to duty at Guantanamo Bay, Cuba. To my best recollection, the course had instruction in exploitation, oversight,

and treatment of detainees and staff in a captivity environment, and what the professional ethical issues might be for clinical psychologists operating in a captivity environment.

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

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

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

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

I thank the committee for allowing me to provide an opening statement, and look forward to your questions. [The prepared statement of Colonel Baumgartner follows:]

Chairman LEVIN. Thank you.

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

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

Dr. Ogrisseg: Thank you, Sir.

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

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

I then served as the Survival, Evasion, Resistance, and Escape—known as SERE—psychologist for the United States Air Force Survival School at Fairchild Air Force Base in Washington from the

4th of February 1999 to 28 July 2002. There, I was the commander's representative for all psychological aspects of training. My primary purpose was to safeguard the integrity of the training by providing risk management oversight of training activities and to conduct research to address questions of training effectiveness and training risk.

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

Thank you for the opportunity to speak with you today, and I look forward to answering any questions you have. [The prepared statement of Dr. Ogrisseg follows:]

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

Let me start with you first, Mr. Shiffrin. When you were the deputy general counsel for intelligence for the Department of Defense, I understand you had some discussions with the Department of Defense general counsel, Jim Haynes, about interrogations in the spring or summer of 2002. Is that correct?

You want to turn your mike you, please?

Mr. Shiffrin: That's correct, Mr. Chairman.

Chairman LEVIN. And did you talk about SERE during those discussions?

Mr. Shiffrin: My recollection, Mr. Chairman, is that, at some point in the spring—late spring, early summer—I had some discussions with Jim Haynes about where expertise might lie, within the Department of Defense, on interrogation. I—the sense I had, and others, was that the Department of Defense had been out of this business for a long, long time, at least since the Vietnam war, and that there were—wasn't a skilled cadre of investigator/interrogators outside of the law enforcement context, the AFOSI and CIS or Army CID. And I think those folks, at least Army CID, were already being used for their expertise in trying to develop effective interrogation methods.

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

Chairman LEVIN. Is that what he said?

Mr. Shiffrin: No, I think I said—

Chairman LEVIN. All right.

Mr. Shiffrin:—at least that part, about finding historical scholarly, professional journals, medical journals, psychological journals

that may be in existence. I assumed that there—this stuff was still actively being investigated, analyzed, pursued by professionals, and—

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

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

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

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

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

Mr. Shiffrin: The name—it could have been.

Chairman LEVIN. All right.

Mr. Shiffrin: I'm not suggesting it wasn't.

Chairman LEVIN. Do you—

Mr. Shiffrin: I think I talked to two people.

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

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

Chairman LEVIN. Oh. Well—

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

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

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

Chairman LEVIN. Now, Colonel Baumgartner, in your written testimony you say that Mr. Shiffrin called and asked you, in July of '02, for information on the use of physical pressures in SERE training. Is that correct? Your written testimony says that.

Colonel Baumgartner: Yes, sir.

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

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. Now, if you look at tab 2, was that—was that your memo that you sent to the general counsel's office?

Colonel Baumgartner: Yes, sir.

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

Colonel Baumgartner: Well, there are actually three tabs, but these two were—

Chairman LEVIN. Those two were two of the attachments—

Colonel Baumgartner: Yes, sir.

Chairman LEVIN.—is that correct? And the first attachment, in number 3—excuse me, number 4—was the Ogrisseg memo that you had obtained from Dr. Ogrisseg. Is that correct?

Colonel Baumgartner: Yes, sir. Number 4 was from Dr. Ogrisseg.
 Chairman LEVIN. All right. Now, tab 3 is a memo entitled “Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees,” is that correct? That’s tab 3?

Colonel Baumgartner: Yeah, it’s a talking paper.

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

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. All right. Now, in your prepared testimony—all right, let me just turn to Dr. Ogrisseg, here.

In your prepared testimony, Dr. Ogrisseg, this is what you’ve said, that—with regards to that July 2002 communication with Colonel Baumgartner, who was then chief of staff for JPRA, it was your recollection that Colonel Baumgartner called you directly, probably on the same day that you generated that July 24th, 2002, memorandum; he indicated he was getting asked, quote, “from above,” about the psychological effects of resistance training. You didn’t know who was asking Lieutenant Colonel Baumgartner from above, and did not ask him to clarify who was asking. You recalled reminding Colonel Baumgartner, in general terms, about the program evaluation data that you had presented at the SERE Psychology Conference, and you also indicated, on page 4 of your written testimony, that you told Colonel Baumgartner that “water boarding was completely inconsistent with the stress inoculation paradigm of training that we use; it was more indicative of a practice that produces learned helplessness, a training result that we tried strenuously to avoid. The final area I recall Colonel Baumgartner asking about were my thoughts on the use of the water board against the enemy.” You asked—“I asked”—or, you responded by saying, “Wouldn’t that be illegal?” He replied that “Some people were asking, from above, about the utility of using this technique against the enemy, for the same reasons I wouldn’t use it in training.” “I replied, ‘I wouldn’t go down that path, because, aside from being illegal, it was completely different arena that we in survival school didn’t know anything about.’” Is that your written testimony?

Dr. Ogrisseg: Yes, that is.

Chairman LEVIN. Is that accurate?

Dr. Ogrisseg: Yes, sir.

Chairman LEVIN. And, Colonel Baumgartner, do you remember that?

Colonel Baumgartner: Yes, sir, I do.

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

Dr. Ogrisseg: Yes, Mr. Chairman, that is my memo.

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

Dr. Ogrisseg: Yes, sir.

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

Dr. Ogrisseg: No, Mr. Chairman.

Chairman LEVIN. And why not?

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

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

Dr. Ogrisseg: Yes, sir.

Chairman LEVIN. Are SERE instructors trained interrogators?

Dr. Ogrisseg: No, they are not, Mr. Chairman.

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

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

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

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

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

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. Who was “above”? Who were you—

Colonel Baumgartner: The Office of General Counsel.

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

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

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

Dr. Ogrisseg: That's correct.

Chairman LEVIN. Okay, thank you.
Senator Graham?

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

Mr. Shiffrin: Yes, Senator.

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

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

Senator GRAHAM. What were you—so, basically, this was driven by a desire to get better information from the detainees at Guantanamo Bay, and the feeling was that, "We're not getting enough, something else needs to be tried." Is that the general—

Mr. Shiffrin: Well—

Senator GRAHAM.—proposition here?

Mr. Shiffrin:—something else needed to be tried. I think the—my sense was that maybe we're not smart about this, and that's why my first request to JPRA was for all historical materials they had that—of what worked and what didn't work. And, in fact, I have a specific recollection of being told, by the person I spoke to on the phone, that we have this information, we have a library, but—it's at Fairchild Air Force Base, near Spokane—and it was going to take some time to get it. And I, of course—the way our office ran, it—Jim Haynes asked me to look in to this, and, a few hours later or the next day, said, "Well, what have you got?" and I said, "Well, I've found where some material lies, but it's 3,000 miles away and it's going to take more than a day to get here," and he said, "Well, that's not good enough." And I probably called back to Fort Belvoir and said, "Gee, I'm under pressure to get this material here as quickly as possible." And, I think, within 4 or 5 days, two members, is my recollection, drove up from Fort Belvoir with several boxes of materials. I think my—I think they occupied 2 or 3 board feet on my shelf in my small office. And I went through them. Ninety-eight percent of it was from the 1950s, post-Korean-War studies, professional journals, articles, analysis of the experience of our servicemen in Korea.

Senator GRAHAM. Okay.

Colonel Baumgartner?

Colonel Baumgartner: Yes, Senator.

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

Colonel Baumgartner: In what frame of reference, sir?

Senator GRAHAM. Getting intelligence?

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

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

Colonel Baumgartner: I don't, sir. I wasn't there.

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

Dr. Ogrisseg: Senator, my expertise comes in the realm of training, and I certainly know that these techniques are effective in getting our trainees to learn the skills and develop the confidence that we need to in order to survive and return with honor from captivity. I do not have a—

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

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

Senator GRAHAM. Thank you.

Chairman LEVIN. Thanks.

Senator Lieberman?

Senator LIEBERMAN. Thanks, Mr. Chairman.

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

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

I would start by echoing what Senator Levin said at the beginning of his remarks, which is that the members of this committee know that intelligence gathered from detainees is critical to our success, our safety, and the safety of our troops and our allies in the war against—with Islamic terrorists. We've had more than one commander, particularly from Iraq or Afghanistan, tell us that information gained from detainees is the most significant form of intelligence, still, that we obtain in order to confront the enemy that we're facing in Iraq and Afghanistan and throughout the world. So, this is an important matter.

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

I remember, once, being with Senator McCain and Senator Graham, meeting at Camp Buka in Iraq—meeting a—which is a large detention center—meeting a former member of al Qaeda in Iraq who said that one of the reasons he was motivated to join al

Qaeda in Iraq was what he heard had happened at Abu Ghraib. So, this is important stuff.

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

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

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

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

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

The second—I can’t deny that there had—that there was probably some discussion, at some point, about reverse-engineering SERE techniques. I don’t—I don’t know where it came from, but it seemed to me that that was a—another part of this. I recall that I—when I answered the earlier question, I guess from Senator Graham, I said that, “Well, the first tranche was this historical stuff from the 1950s.” I think Mr. Haynes came back to me and said, “No, no, this isn’t what I’m looking for.” In fact, I think the end—at the end of that—that stuff sat on my shelf for several

months, and I don't know if anyone else looked at it besides me—but, I remember, at the time of my leaving the General Counsel's Office, I called down to Fort Belvoir and said, "You guys better come and get this back, because a lot of it is"—

Senator LIEBERMAN. Yeah.

Mr. Shiffrin:—"original material."

Senator LIEBERMAN. Let me ask you, if I can, because I'm—time is limited—this question. Did you ever call, or, as far as you know, did anybody in the General Counsel's Office at the Pentagon ever call, for instance, the interrogation experts at the DIA, the Defense Intelligence Agency, or the Army's interrogation school?

Mr. Shiffrin: Not to my knowledge.

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

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

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

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

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

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

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

Dr. Ogrisseg: No, I felt like, in the discussion with Lieutenant Colonel Baumgartner, that I indicated, you know, one of my ethical issues as a psychologist, since I'm not a legal practitioner, not a judge, not a lawyer, but, you know, I—ethics within my field—and one of the main things is, you don't practice outside of your bounds of competence. And that would have been outside of the bounds of, you know, my competence to have gone there, because I was some-

one who is in the training business and understood the training population. So, when I said, you know, this is something that we at the Air Force Survival School don't know about, you know, I was giving my opinion there, and also giving my opinion, you know, about, you know, the water board with respect to training. You know, I don't believe that it should be used anywhere, you know, but I didn't—you know, that's—that was my stance that I was taking at that time.

Senator LIEBERMAN. Understood. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Lieberman.

Senator Collins?

Senator COLLINS. Thank you, Mr. Chairman.

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

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

Mr. Shiffrin: Assuming the correctness of your premise—and that is, they did not go to the FBI; I have no personal knowledge as to whether they did or didn't, but it seems like they didn't—my answer is somewhat my personal observation in my limited dealings with the Secretary, and that was, the Secretary was very jealous of other agencies, and specifically with respect to DOD's inherent capabilities. I can remember one incident that came up two or three times, somewhat unrelated, and that was the CIA's ability to get things done in Afghanistan, and the Secretary was quite upset that the CIA was more effective in Afghanistan than we were, in some cases, especially at the onset of hostilities or before hostilities. And, of course, it was understandable; the CIA had been there for 25 years, and we haven't set foot—the military hadn't set foot in Afghanistan for 25 years. But, that was never a satisfactory answer to him. In fact, he ended up, sort of, building a capability that mirrored the CIA.

I think it would have been unthinkable for—to say to the Secretary that, "Well, you know, the people who were really good at this are law enforcement; we should talk to the FBI, talk to DEA, talk to other law enforcement agencies that have been conducting

interrogations for their entire careers.” Now, I just—I don’t think he would have accepted that answer.

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

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

Mr. Shiffrin: I’m not privy—I was not privy to that.

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

Colonel Baumgartner: No, Senator, I’m not.

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

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

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

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

Colonel Baumgartner: No, we don’t teach interrogation techniques to our students.

Senator COLLINS. It’s resistance and survival—

Colonel Baumgartner: Yeah, we—

Senator COLLINS.—correct?

Colonel Baumgartner:—we teach our instructors interviewing techniques, we teach them how to use physical pressures so that we can teach students how to resist a determined adversary. And that’s the—they learn those, not to employ them as offensive capabilities, but to teach students how to employ the techniques we’re trying to teach them on how to resist enemy captivity.

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

Colonel Baumgartner: Yes, ma'am.

Senator COLLINS.—inhumane methods.

Colonel Baumgartner: Yes, ma'am.

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

Colonel Baumgartner: Yes, Senator, I believe it is.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Collins.

Senator Akaka, I believe, is next in line.

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

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

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

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

Colonel Baumgartner: Sir, there was contact between JPRA and the Office of General Counsel prior to July 2002. As I said in my opening statement, in interviews with the committee staffers, we—I came to realize that they had actually requested that material that Mr. Shiffrin said—the historical material—back in December of '01. So, that was the first contact.

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

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

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

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

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

As far as actual techniques being demonstrated, I'm not—I have no knowledge of that. I just—I know they were going to get briefed, and I—I hope that answers your question.

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

Dr. Ogrisseg: Senator, I can certainly answer that question with regards to how effective our training is, because, you know, we've studied it. You know, one of the purposes of my job is to do program evaluations of this type of training, to ensure that our students come through feeling confident that they're able to handle these situations, and therefore, you know, we use some of the techniques that we do to actually enhance their confidence. You know, much like a lot of other fields that want people to make decisions, you know, in very difficult spots, you know, we put them into circumstances that model what people have experienced in the past. You know, firefighters use physical pressures. You know, they

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

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

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

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

Chairman LEVIN. Thank you, Senator Akaka.

Senator Bill Nelson?

Senator BILL NELSON. Thank you, Mr. Chairman.

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

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

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

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

Dr. Ogrisseg: Yes, sir.

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

Dr. Ogrisseg: Yes, sir.

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

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

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

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

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

Dr. Ogrisseg: In all of the, you know, school programs that I have seen, you know, there is a term that can be used for them to, you know, say, "Hey, I need to talk to someone," get them out of role and, you know, an opportunity to bring them back online. And, you know, with the, you know, water board, when I saw it, in 2001, there, you know, was essentially not a similar mechanism for that,

that would allow them, you know, before being placed in that pressure, to, you know, avert it. And even with the specialists that you're talking about, the, you know, the SEALs going through, it doesn't take, you know, very long, you know, with that device, to instill a very real fear of drowning, you know, for—and death—for anyone who's going through it, even if they know what the rules of engagement are, you know, for using it during training.

Senator BILL NELSON. All right.

Now, let's talk about lack of sleep. What was your—well, let me just ask you. In chapter 5 of the "Code of Conduct and the Psychology of Captivity," it says, quote, "Lack of sleep for prolonged periods may result in anxiety, irritability, memory problems, confusions, hallucinations, paranoia, disorientation, and, ultimately, death." What's your observation of that, as you saw it in this SERE training?

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

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

Dr. Ogrisseg: Senator, are you talking about the—how good they learn the material?

Senator BILL NELSON. No.

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

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

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

Senator BILL NELSON. You don't—

Dr. Ogrisseg:—I'm qualified—

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

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

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

Under the Army Field Manual, the standard by which we are trying to put into law, the standard by which you can interrogate detainees, it says this, "Use of separation must not preclude the de-

tainee getting 4 hours of continuous sleep every 24 hours.” That’s the standard in the Army Field Manual, for detainees.

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

Dr. Ogrisseg: Senator, I certainly do—you know, I have no familiarity, you know, with the subject that you’re talking about. I was not there. And I don’t feel qualified to offer an opinion on that.

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

Dr. Ogrisseg: I certainly did.

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

Dr. Ogrisseg: Well, I did not go through anything as prolonged as what you have described there.

Senator BILL NELSON. How much time?

Dr. Ogrisseg: It certainly varies within the courses, but, you know, certainly, you know, in the range of, you know, 4 to 12 hours.

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

Dr. Ogrisseg: Yes, sir.

Senator BILL NELSON. And you don’t have any opinion as to my question?

Dr. Ogrisseg: Well, you’re asking me to try to—

Senator BILL NELSON. I’m asking your opinion.

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

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

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

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

Mr. Chairman, thank you.

Chairman LEVIN. Thank you.

And that reminds me, your reference to Qahtani, that there were portions of my statement that I left out because it was obviously a long statement; and so, my entire statement will be made part of the record, including the paragraphs relating to Mr. Qahtani. [The prepared statement of Chairman Levin follows:] [COMMITTEE INSERT]

Chairman LEVIN. Senator Ben Nelson?

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

Dr. Ogrisseg, the purpose of the training for our troops is to help them be able to survive, under the most extraordinary of circumstances, these techniques. Is it designed to keep them from tell-

ing secrets or giving up information that would be harmful, as well?

Dr. Ogrisseg: Yes, Senator, it is.

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

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

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

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

Senator BEN NELSON. It's not foolproof.

Dr. Ogrisseg: It's not foolproof. When we were putting a—you know, we want to—this is like putting a 400-pound bar on them when they are only prepared to lift one that's, you know, maybe a couple hundred pounds.

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

Dr. Ogrisseg: Yes, Senator, that's true.

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

Dr. Ogrisseg: Well, it's both. Information is one way that our forces could be exploited, you know, but, you know, obviously, you know, we want them to survive and return with honor. So, that—it's both, you know, survival and resistance.

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

Colonel Baumgartner: No, sir, I did not.

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

Colonel Baumgartner: I knew, when we provided information on resistance—or interrogation techniques, that they were—somebody way above my paygrade was going to make a decision what was ap-

propriate and what was inappropriate. We were never part of those discussions.

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

Mr. Shiffrin: I didn't, Senator. I—my sole effort, as I recall, was to merely find out what information was out there.

Senator BEN NELSON. And nobody asked you what your opinion was under the Uniform Military Code or Geneva Convention or any other base for providing against torture?

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

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

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

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

Mr. Shiffrin: Yes. I never heard of water boarding until I think I had retired from the Department and found out it had been used. I did not, at any time, participate in any discussion of specific harsh techniques.

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

Chairman LEVIN. I believe Senator Pryor is next.

Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

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

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

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

Colonel Baumgartner: I'm really not qualified to answer that, Senator. I mean, what we do as an administration in questioning detainees is something that's got to be discussed by legal counsel and administration officials far above my paygrade.

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

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

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

Colonel Baumgartner: World War II, Korea, Vietnam, the cold war, the Iranian hostage crisis, for example. We even study other detention situations, civilian detention situations that have lessons that might give us for our training.

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

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

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

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

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

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

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

Colonel Baumgartner: One, sir, I don't think we conduct training that's going to violate U.S. law. And, two—

Senator PRYOR. But—

Colonel Baumgartner:—I'm not going to torture students.

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

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

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

Colonel Baumgartner: We are simulating an enemy that is not complying with the Geneva Conventions—

Senator PRYOR. Right.

Colonel Baumgartner:—that's true.

Senator PRYOR. And did you get the impression, at your tenure there, that—when did you find out that they—that someone somewhere was trying to take what you all are doing in the SERE program and actually use it offensively with detainees? When did you discover that?

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

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

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

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

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

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

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

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

Chairman LEVIN. Thank you, Senator Pryor.

Senator Reed?

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

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

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

Senator REED. What's the other agency?

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

Senator REED. Did you send those—the information?

Colonel Baumgartner: Yes, sir, we did.

Senator REED. Thank you.

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

Colonel, do you have any thoughts?

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

Senator REED. Well—

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

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

Colonel Baumgartner: I think it depends on the adversary.

Senator REED. No, I—

Colonel Baumgartner: I think—

Senator REED. Let—

Colonel Baumgartner:—our current adversaries, that's probably true.

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

Colonel Baumgartner: Absolutely, sir.

Senator REED. That's correct.

Colonel Baumgartner: Absolutely.

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

Colonel Baumgartner: Right, sir.

Senator REED. Which leads, again, to the conclusion that these techniques are probably, per se, violative of the Geneva Convention. Now, did it ever cross your mind, when you were sending this information over to the General Counsel's Office, what—why they needed it? Did you ever—and you just quietly, without—not officially raise the question, Why do they need this?

Colonel Baumgartner: When you're tasked by the Office of the Secretary of Defense at a level that we are, if they needed the information—and, quite frankly, I had no idea what they were going to do with it, what they were going to use, what they would decide not to use, and what the country would use that information, or the administration would use that information, for, in terms of making a decision. So, when I'm tasked by higher headquarters to provide information they can legitimately have, I can't really turn around and tell the flag officer and the senior executive service guys no.

Senator REED. No one is suggesting that you were not complying with a legitimate request, but did it—again, the question is not so much what you did and—but, did it—did anyone in your organization, sort of, ask the question, even around the water cooler, "What the"—

Colonel Baumgartner: We—

Senator REED.—"heck's going on?"

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

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

Colonel Baumgartner: Really never came to any conclusions. There was a lot of discussion, but not a lot of conclusions.

Senator REED. Right.

Colonel Baumgartner: This is just a very difficult question.

Senator REED. Right.

Colonel Baumgartner: Because, you know, when you go to war, you've got to figure out how you're going to detainee treatment.

Senator REED. Right.

Colonel Baumgartner: And usually it's really best if you do that ahead of time, before you get in the middle of things.

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

Mr. Shiffrin: My personal view, yes. I don't think it was—

Senator REED. Okay.

Mr. Shiffrin:—something I thought about at the time.

Senator REED. Well—

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

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

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

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

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

Chairman LEVIN. Thank you.

Senator SESSIONS?

Senator SESSIONS. Thank you.

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

Mr. Shiffrin: I took the position of deputy general counsel for intelligence in—

Senator SESSIONS. For—

Mr. Shiffrin:—at the Department of—

Senator SESSIONS.—DOD.

Mr. Shiffrin:—Department of Defense, in December of 1997. I left the Department of Justice, where I was at OLC. And I had that position until I was demoted, or transferred, at the end of the 2002. And I then became the acting general counsel at DIA for my last 6 months at the Department of Defense, and I retired, July of—

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

Mr. Shiffrin: I had no knowledge of that. I had no knowledge of any of the techniques or what was being used, methodology, at Guantanamo.

Senator SESSIONS. Okay.

Well, I would just take a moment—I know, Mr. Chairman, this panel—there’ll be other panels afterwards. What I’d like to say is, on behalf of the military and the men and women who try to serve our country, this is what I understood happened. There were three incidences of this so-called water boarding, according to the Director of the CIA. None of them were done at Guantanamo, and none of them were done by the FBI. And what I understand is that the military was working to deal with a small, but valuable, group of individuals who had, they believed, critical information. One was the so-called 20th hijacker that had met Mohamed Atta in the United States and was eventually captured. He did not go on the flight to attack the Capitol or the White House, he was captured in Iraq—or Afghanistan—and brought back over here. And during that time, the interrogators asked for authority to interrogate aggressively.

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

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

Mr. Shiffrin: Senator, I confess, I don’t remember the date of the Hamdan case.

Senator SESSIONS. Well, it was several years later, 1 or—at least 1 or—probably 2 or 3 years later that that case came out. So, they were operating under a piece of legislation passed by the United States Congress and supported by our Judiciary Committee members, Senator Leahy, Biden, and Kennedy, and Senator Levin and others who were present in the Congress at that time. And it defined “torture,” and it prohibited torture, but it didn’t just prohibit isolation, or it didn’t prohibit stress techniques; it said that you could not subject someone to “severe physical or mental pain or suffering.” So, that was an operable statute, was it not, all along? Do any of you know that? [No response.]

Senator SESSIONS. So, that’s—that essentially is what they are wrestling with.

Now, Mr. Goldsmith, who was Office of Legal Counsel, was he not, Mr. Shiffrin? Is that who—what his title was, in the Department of Justice?

Mr. Shiffrin: He was the assistant attorney general—

Senator SESSIONS. Of Legal Counsel.

Mr. Shiffrin:—Office of Legal Counsel, yes.

Senator SESSIONS. Right, Legal Counsel. So, he was not happy with some of these techniques that were used, and he wrote a book about it, “The Terror Presidency,” and this is what he said in his book. He’s been widely renowned here as a critic of the Bush ad-

ministration, but he said this, as to the lawyers and trying to do the right thing, quote, “Many people believe the Bush administration had been indifferent to these legal constraints in the fight against terrorism. In my experience, the opposite is true; the administration has paid scrupulous attention to the law,” close quote. He goes on to add, quote, “Many people think the Bush administration has been indifferent to wartime legal constraints, but the opposite is true; the administration has been strangled by law, and, since September 11th, 2001, this war has been lawyered to death,” close quote.

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

And so, if we went too far on some of those areas—I hope we didn’t, but if we did, then I think, in the process of the Supreme Court and all these hearings and all—for goodness sakes, we certainly are doing much better in that regard. But, it is not the kind of rogue activity that has been suggested. There was no doubt about it, our military felt that this country was threatened after 9/11, and they were able to apprehend some of the key players in that, and they desperately wanted intelligence, to make sure that if there was another cell group out there planning a similar attack, they could be stopped. And I believe they consulted the legal system, all the way up to the Department of Justice. And hopefully in the future we can create a policy that we can all agree on, but I just don’t think we ought to disrespect our men and women in uniform, who have done their best to serve their country at a time when this Nation saw itself under real threat.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Senator McCaskill?

Senator MCCASKILL. Mr. Chairman, with the utmost respect for my friend from Alabama, I think that we disrespect the men and women in uniform if we don’t have this hearing. I think that this hearing is incredibly important for those men and women, and for the rule of law that they stand for, and for the kind of democracy that we want to be, and that we want the rest of the world to be.

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

Mr. Shiffrin: No.

Senator MCCASKILL. So, have you ever read it?

Mr. Shiffrin: No.

Senator MCCASKILL. Well, would you—

Mr. Shiffrin: Not to my recollection.

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

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

Senator MCCASKILL. Well, me, too.

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

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

Mr. Shiffrin: That would be one example, yes.

Senator MCCASKILL. And what you’d really be doing, as an officer of the court, or as an officer sworn to uphold the Uniform Code of Military Justice, is, you would be saying, ahead of time, “It’s okay if you break the law.”

Mr. Shiffrin: You’re saying that. Whether it’s legally effective or not is another question.

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

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

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

Mr. Shiffrin: They could be, Senator.

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

Mr. Shiffrin: That’s correct.

Senator MCCASKILL. And he is a trained lawyer.

Mr. Shiffrin: That’s correct.

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

Mr. Shiffrin: I don’t recall.

Senator MCCASKILL. It just—it’s just mind-boggling to me that that phrase would be written, and that no one would hear the raging sirens and flashing red lights that that phrase would, in fact,

embrace under the rule of law in the United States of America. And it's hard for me to understand.

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

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

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

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

Senator MCCASKILL. Okay.

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

Senator MCCASKILL. Were you ever present in a meeting with Mr. Haynes at or near or after the time he recommended to Secretary Rumsfeld that he approve most of these interrogation techniques? Some of them that he didn't approve, in category number 3, but he certainly approved hooding naked people and siccing dogs on them.

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

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

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

Senator MCCASKILL. And so, you were aware the memorandum existed.

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

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

Mr. Shiffrin: Well, it wasn't me, Senator.

Senator MCCASKILL. I understand that. But, you were—you were much closer to it than any of us were, and it—

Mr. Shiffrin: Well—

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

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

Senator MCCASKILL. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator.

And Senator Martinez is next.

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

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

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

Chairman LEVIN. Thank you.

We'll just have a brief second round.

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

Mr. Shiffrin: I don't recall that, Senator.

Chairman LEVIN. You deny it?

Mr. Shiffrin: I don't recall it. I note that the memo that you referred to in the book is not directed to me, it's directed to the general counsel.

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

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

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

Colonel Baumgartner: Yes, sir.

Mr. Shiffrin: Senator, may I add one thing?

Chairman LEVIN. Sure.

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

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

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

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

Mr. Shiffrin: I understand.

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

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

Mr. Shiffrin: No. By Mr. Haynes or—

Chairman LEVIN. Yeah, by anybody.

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

Chairman LEVIN. All right.

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

Colonel Baumgartner: Senator—or, Mr. Chairman, I believe I said that we developed these tactics for use in training. That's their purpose. And—

Chairman LEVIN. And I think you—

Colonel Baumgartner:—and to export them is the decision of folks above my paygrade.

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

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. Now, do you know whether or not—and let me just refer you to—hold it. Do you know who Major General James Soligan is? He's the chief of staff of the Joint Forces Command.

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. Okay. And he was—that is the Joint Personnel Recovery Agency's higher headquarters, is that correct?

Colonel Baumgartner: Yes, sir.

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

Colonel Baumgartner: Yes, sir.

Chairman LEVIN. Do you agree with that?

Colonel Baumgartner: Sir, I wasn't privy—

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

Colonel Baumgartner: So, used to—

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

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

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

Colonel Baumgartner: Sir, I have no recollection of any of that, no.

Chairman LEVIN. Are you aware of the fact that the SERE resistance training techniques made their way to Iraq in the way I describe it; also, instructors from the JPRA SERE school went to Iraq; that the Inspector General reported that, in September of '03, at the request of the commander of the Special Mission Unit Task Force, the JPRA deployed a team to Iraq to provide assistance to interrogation operations?

Colonel Baumgartner: Sir, I was retired by then.

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

Colonel Baumgartner: I have no—sir, I have no knowledge of that.

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

Colonel Baumgartner: Sir, I was not part of that decision-making—

Chairman LEVIN. I'm—

Colonel Baumgartner:—process, and I don't have a comment on that.

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

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

Chairman LEVIN. I'm aware of that fact.

Colonel Baumgartner:—I—

Chairman LEVIN. Do you disagree with Mr. Soligan, with General Soligan, on the question of whether or not "The use of resistance to interrogation knowledge for offensive purposes lies outside the roles and responsibilities of JPRA"? Do you disagree with him?

Colonel Baumgartner: No, sir, I didn't say that. If that's—

Chairman LEVIN. I'm asking if you—

Colonel Baumgartner:—what General Soligan says, then I don't have a problem with that, because they were under his control, certainly not mine.

Chairman LEVIN. All right. And the deputy commander of JFCOM, Lieutenant General Wagner, when he said, "relative to interrogation capability, the expertise of JPRA lies in training personnel how to respond and resist interrogations, not in how to conduct interrogations," do you agree with that?

Colonel Baumgartner: Yes, sir.

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

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

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

Colonel Baumgartner: I have no knowledge, sir.

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

Senator Warner?

Senator WARNER. Thank you, Mr. Chairman.

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

Colonel Baumgartner: Sir, there was some written information, and they requested briefings, so we—

Senator WARNER. All right So, there is—

Colonel Baumgartner:—[inaudible] a briefing.

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

Colonel Baumgartner: Yes, sir, I believe there is.

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

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

Senator WARNER. Does it—is it the desire of the committee, then, to have those documents? Perhaps—

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

Senator WARNER. It seems to me that the record—

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

Senator WARNER. I don't question—

Chairman LEVIN.—by the Department of Defense.

Senator WARNER. I'm not—

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

Senator WARNER. Testimony—

Chairman LEVIN.—and our staff has—

Senator WARNER. I'm aware of that.

Chairman LEVIN.—obtained that is classified.

Senator WARNER. Well, then going beyond documents, did the SERE organization of JPRA provide individuals to go and perform training?

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

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

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

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

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

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

Senator WARNER. Was that sharing an issue that your organization sought higher authority to approve? I mean, for instance, did it go up to the Secretary of Defense?

Colonel Baumgartner: It didn't go to the Secretary of Defense, sir, but it did go up to the flag level and Joint Forces Command.

Senator WARNER. Wait a minute.

Colonel Baumgartner: Two—

Senator WARNER. You know, I spent 5 years in the building. I never know what a "flag level" is. There are flags all over. It went from where to where?

Colonel Baumgartner: It went from JPRA headquarters to the Joint Forces Command, J-3, and, I think, into the chief of staff's office.

Senator WARNER. Chief of staff of?

Colonel Baumgartner: Joint Forces Command.

Senator WARNER. Now, I'm referring to a document, 26 July '02, Department of Defense memorandum for the Office of the Secretary of Defense general counsel, and it says, paragraph 1, unclassified, "The purpose of this memorandum is to answer follow-on questions resulting from the meeting between JPRA and OSDGC on 25 July '02." Are you familiar with that meeting?

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

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

Colonel Baumgartner: Two or three, sir.

Senator WARNER. Two or three telephone conversations.

Colonel Baumgartner: Yes, sir.

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

Colonel Baumgartner: No, sir, not that I recall.

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

Chairman LEVIN. Thank you, Senator.

Senator Lieberman?

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

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

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

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

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

Senator LIEBERMAN. The enemy we're facing now, the Islamist extremists, obviously have a unique—both a cultural background, but also a theological extremism about them. And—well, let me—the question is this. As Colonel Baumgartner said, when you were asked for this information about SERE techniques by the General Counsel's Office in the Pentagon, since you knew they were not involved in training, it was natural to assume that they may have been asking for it to employ against detainees that we had in the war on terrorism. Was there any information that you conveyed that was based on the unique cultural background of the Islamist terrorists?

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

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

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

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

Colonel Baumgartner: No, Senator, it—that didn't—we had no—nothing to do with that.

Senator LIEBERMAN. Okay.

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

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

Senator LIEBERMAN. Right.

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

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

Mr. Shiffrin: No. No.

Senator LIEBERMAN. Thank you.

Mr. Shiffrin: Everything I got was historical, from the 1950s and—basically.

Senator LIEBERMAN. And obviously that was a totally different enemy.

Mr. Shiffrin: Correct.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Chairman LEVIN. Thank you.

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

Mr. Shiffrin: I said that the—my—

Chairman LEVIN. Did you just say that, this—

Mr. Shiffrin: I did.

Chairman LEVIN. Today.

Mr. Shiffrin: And I said—

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

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

Chairman LEVIN. But, just—

Mr. Shiffrin: My—

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

Mr. Shiffrin: That—

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

Mr. Shiffrin: I said that—

Chairman LEVIN. That was an hour ago, not—

Mr. Shiffrin: I said it to Senator Lieberman. I said—

Chairman LEVIN. Right.

Mr. Shiffrin:—that the—

Chairman LEVIN. Is that [inaudible]—

Mr. Shiffrin:—primary—

Chairman LEVIN.—you said that?

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

Chairman LEVIN. I understand.

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

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

Mr. Shiffrin: Yes.

Chairman LEVIN. Okay.

Just, Dr. Ogrisseg, one other question for you. In an article, or a book—I'm not sure—that you wrote on the—part of the book called "Code of Conduct and the Psychology of Captivity: Training, Coping, and Reintegration of Military Life," you said that, "The use of physical torture has historically yielded poor information and, paradoxically, serves to enhance resistance."

Dr. Ogrisseg: Yes, sir.

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

Dr. Ogrisseg: Yes, I did, Mr. Chairman.

Chairman LEVIN. Is that your belief?

Dr. Ogrisseg: Yes, it is, Mr. Chairman.

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

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

Chairman LEVIN. I see.

Dr. Ogrisseg: There were multiple authors on that chapter. And, you know, if I may, you know, comment back to the question I was being asked to answer earlier, when you were trying to define what 18 hours or 17 hours of sleep deprivation is, well, you know, if you're talking about—without knowing anything more, getting up at 5:00 a.m. and going to bed at 10 or 11 o'clock at night, I think most people do that, kind of, every day, so that's why I was, you know, saying I need more—

Chairman LEVIN. Sure.

Dr. Ogrisseg:—context.

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

Dr. Ogrisseg: Yes, sir.

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

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

Chairman LEVIN. All right. And when you went through SERE training, or witnessed SERE training—

Dr. Ogrisseg: Uh-huh.

Chairman LEVIN.—the sleep deprivation, you talked about there, that our people were trained to be inoculated against were shorter periods than that.

Dr. Ogrisseg: Well—

Chairman LEVIN. You said 4 hours, perhaps?

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

Chairman LEVIN. To sleep deprivation.

Dr. Ogrisseg: We don't have enough time to. And I'm not sure that you could inoculate to them—

Chairman LEVIN. To sleep deprivation.

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

Chairman LEVIN. How do you simulate it?

Dr. Ogrisseg: Well, you know, we simulate that by keeping them up. You know, certainly they are doing some of the things that—

Chairman LEVIN. Keeping them up for how long?

Dr. Ogrisseg: Sometimes overnight. You know, we don't have an infinite amount of time.

Chairman LEVIN. How many hours, though, about?

Dr. Ogrisseg: In the—it varies, but in the range of about 4 to 10 hours or so.

Chairman LEVIN. Okay, thank you.

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

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

Chairman LEVIN. Our next panel is made up of Alberto Mora, former general counsel of the Department of the Navy; retired Rear Admiral Jane Dalton, former legal advisor to the Chairman of the Joint Chiefs of Staff; and retired Lieutenant Colonel Diane Beaver, former staff judge advocate at the Joint Task Force Guantanamo Bay.

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

So, if you would proceed, Colonel Beaver, we would—

Colonel Beaver: Yes, sir.

Chairman LEVIN. Thank you.

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

Colonel Beaver: Mr. Chairman and committee members, I appear today voluntarily, in my private capacity. Although I am currently

an employee of the Department of Defense, I do not speak today on its behalf. I am here to testify truthfully and completely regarding my knowledge of the development and implementation of interrogation policies and practices at Guantanamo Bay, Cuba, from June 2002 to June 2003.

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

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

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

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

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

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

I believed, at the time, and still do, that such a balance could be reached if the interrogations were strictly reviewed, controlled, and monitored. My legal opinion was not a blank check authorizing unlimited interrogations. Throughout the opinion, I emphasized the need for medical, psychiatric, and legal reviews to be conducted prior to the approval of these interrogation plans. My judge advo-

cates and I were intent on monitoring the interrogations and would stop any excessive or abusive behavior if we saw it.

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

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

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

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

Thank you. [The prepared statement of Colonel Beaver follows:]
Chairman LEVIN. Thank you, Colonel Beaver.
Admiral Dalton?

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

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

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

Those challenges called on lawyers at the Department, as never before, to provide legal advice to enable our Nation's leaders to aggressively meet the unprecedented threat to our National security without compromising our adherence to the rule of law and the United States international treaty obligations.

That we undertook this task at a time of war and amidst a continuous stream of credible intelligence pointing to a substantial

and resilient terrorist threat made our work as lawyers all the more difficult.

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

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

Thank you, again, for the opportunity to contribute to today's hearing, and I look forward to answering your questions. [The prepared statement of Admiral Dalton follows:]

Chairman LEVIN. Thank you, Admiral.

Mr. Mora?

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

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

These hearings are critical to better understanding both our Nation's interrogation practices—

Chairman LEVIN. Can you put the mike more directly in front?

Mr. Mora: Yes, sir.

Chairman LEVIN. That'd be great, thanks.

Mr. Mora: These hearings are critical to better understanding both of our Nation's interrogation practices and, of even greater importance, of the consequences to our Nation if we were to continue to employ cruelty in the interrogation of detainees.

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

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

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

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

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

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

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

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

These adverse foreign policy consequences inevitably came to damage our National security strategy and our operational effectiveness in the war on terror. Our ability to build and sustain the broad alliance required to fight the war was compromised. International cooperation, including in the military intelligence and law enforcement arenas, diminished as foreign officials became concerned that assisting the U.S. in detainee matters could constitute aiding and abetting criminal conduct in their own countries. As the difficulties of Prime Ministers Blair, Howard, and Aznar dem-

onstrated, seemingly every foreign politician who sought to ally his country with the U.S. effort on the war incurred a political penalty.

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

First, some U.S. flag-rank officers maintained that the first and second identifiable causes of U.S. combat deaths in Iraq, as judged by their effectiveness in recruiting insurgent fighters into combat, are, respectively, the symbols of Abu Ghraib and Guantanamo. And there are others who are convinced that the proximate cause of Abu Ghraib was the legal advice authorizing abusive treatment of detainees that issued from the Department of Justice's Office of Legal Counsel in 2002.

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

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

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

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

Thank you. [The prepared statement of Mr. Mora follows:]

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

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

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

Colonel Beaver: This e-mail was not written by me, so I can't account for its accuracy, except that of—somebody from the Criminal Investigation Task Force wrote it. But, separate from that, regarding Jonathan Fredman participating in a meeting that I held, I had held a number of meetings to discuss interrogation techniques once the military intelligence personnel wanted to do more aggressive

techniques. So, I thought it was in the best interests of all concerned that everyone participate in meetings, including the law enforcement community, to understand where everybody was coming from. CITF was invited, and did participate.

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

Chairman LEVIN. Well, what was the reference to “protection”? You said, “If the”—

Colonel Beaver: Well—

Chairman LEVIN. Why—

Colonel Beaver: I'm sorry, sir.

Chairman LEVIN. Why would you need—well, first of all, did you say, “We'll need documentation to protect us”? And what were you referring to? Legal opinion?

Colonel Beaver: Again, I—this is not my e-mail—

Chairman LEVIN. All right.

Colonel Beaver:—so I can't say with certainty I said that.

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

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

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

Colonel Beaver: Well, I remember the J-2 at the time, Lieutenant Colonel Jerry Phifer, had brought up wet-towel technique. And so, I had certainly—well, I had never seen water boarding. I still haven't, as of today. I've never seen any kind of wet-towel technique. And so, that was one of the things that the—well, Defense Intelligence Agency personnel and military intelligence personnel wanted to request. And I believe I was asking about that because I had not ever seen that, myself.

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

Colonel Beaver: Right.

Chairman LEVIN.—“technique?”—is that an accurate reference?

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

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

Colonel Beaver: The—what I remember about SERE being discussed was the fact that if something was—if something was going to be approved by a higher command, which I thought, in this case, would be General Hill—I had, really, no idea it would go higher than General Hill—that you would then have to have an SOP, standard operating procedure, you would have to have people trained, you would have to do all the kinds of things to ensure that techniques were used properly and they would not go beyond what was lawful. And so, because SERE already had SOPs on many of these types of techniques, I know I certainly thought if something got approved—again, a technique that SERE used—that that could be a good starting point for an SOP. So—

Chairman LEVIN. Were you—

Colonel Beaver:—it made sense, if somebody were already doing it, is all I’m saying. And so, we could not employ these techniques without the proper training and controls.

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

Colonel Beaver: Yes, sir.

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

Colonel Beaver: Right.

Chairman LEVIN.—interrogation purpose?

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

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

who weren't trained in that, except in human behavior—also, I think, it was a natural leap for them to think, “Well, perhaps my colleagues at the SERE school, in behavioral psychology, might be helpful to me.”

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

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

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

Colonel Beaver: Well—

Chairman LEVIN. Well, wait a minute.

Colonel Beaver: Yes, sir.

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

Colonel Beaver: Well, I—

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

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

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

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

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

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

Colonel Superville or his staff asking me anything, like, "Are you a lunatic? What were you thinking?" or, you know, "Great opinion," or—I receiving nothing from him; and, until it came back down from the SECDEF, I had no idea what was going on. I fully expected General Hill to make that policy decision.

Chairman LEVIN. Did you expect there would be different—not a—additional legal analysis and that your—

Colonel Beaver: Yes, sir.

Chairman LEVIN.—opinion—

Colonel Beaver: I certainly—

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

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

Chairman LEVIN. "No, sir," you—

Colonel Beaver: Oh, sorry.

Chairman LEVIN. My question was, Were—

Colonel Beaver: I'm sorry.

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

Colonel Beaver: Shocked.

Chairman LEVIN.—you expect—shocked, okay.

Colonel Beaver: Um—

Chairman LEVIN. Why were you shocked?

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

Chairman LEVIN. And General Hill was the SOUTHCOM Commander.

Colonel Beaver: Yes, he was.

Chairman LEVIN. Okay, thank you.

Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

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

Admiral Dalton: Yes, Senator, I did.

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

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

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

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

Senator GRAHAM. Who did you tell?

Admiral Dalton: Well, the first thing—I discussed—as I recall, I discussed the memo with my staff. I don't recall that, at that time, I discussed the memo with anyone else.

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

Mr. Mora: Yes, Senator.

Senator GRAHAM. What did you think?

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

Senator GRAHAM. What did you do?

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

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

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

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

Colonel Beaver: No. There was no—

Senator GRAHAM.—the conclusion—

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

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

Colonel Beaver: I have no animosity, but I understood, at the time, I was hung out by the SOUTHCOM SJA—

Senator GRAHAM. Okay.

Colonel Beaver:—certainly.

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

Colonel Beaver: Yes, sir.

Senator GRAHAM. All right. Was water boarding mentioned?

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

Senator GRAHAM. Well—

Colonel Beaver:—like, a wet towel on—

Senator GRAHAM. Right.

Colonel Beaver:—your face—

Senator GRAHAM. Right.

Colonel Beaver:—to make you—

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

Colonel Beaver: If it could be done legally, and, you know, in terms of the medical review of the detainee and those kinds of—

Senator GRAHAM. Sure.

Colonel Beaver:—things, in a very controlled, supervised setting, yes.

Senator GRAHAM. Okay.

Colonel Beaver: But only—and I'm—and part of this is that you don't jump to one thing first. I mean, much of it that I learned from my—

Senator GRAHAM. Well, do you—

Colonel Beaver:—the professionals, is that you build—I mean, you use what works.

Senator GRAHAM. Sure.

Colonel Beaver: And that could be just interviewing. And so, it's not just a matter of, I think, an impression of “everyone gets the water board.”

Senator GRAHAM. If I asked you the question, “Does the UCMJ prohibit water boarding?” what would you say?

Colonel Beaver: What's—I think that's a difficult answer, and that's what I struggled with in my opinion. And I'm not a military justice expert, and I tried to raise—

Senator GRAHAM. What is your legal background?

Colonel Beaver: I'm a jack-of-all-trades, basically. I've done a little bit of everything—administrative law, criminal law, I've been a prosecutor, intel law. I've deployed with Special Operations Command in Desert Shield/Storm psychological operations. So, just, really, a number of—I've been a—

Senator GRAHAM. So, when you called Admiral Dalton, what were you trying to get from her?

Colonel Beaver: Because Manny wouldn't help me, I was trying to get help from her staff in dealing with some of these difficult issues.

Senator GRAHAM. Admiral Dalton, why didn't you come in and help?

Admiral Dalton: As I indicated, sir, I don't recall that specific conversation.

Senator GRAHAM. Well, once you saw the memo and you had concerns about it, why didn't you do what Mr. Mora did?

Admiral Dalton: What I did, Senator, when I received the memo, was—I recognized that there were policy and legal issues involved, and I decided that what I needed to do at my level was to conduct a further legal and policy review, as General Hill's memo had requested.

Senator GRAHAM. Uh-huh.

Admiral Dalton: And so, I asked my staff to begin doing legal research, and we—to set—to begin setting up a legal and policy review.

Senator GRAHAM. What were your conclusions?

Admiral Dalton: Well, of the legal and policy review, that—I did not actually conclude that process at that time.

Chairman LEVIN. Mr. Mora, how long did it take you to understand this was the wrong road to go down?

Mr. Mora: Sir, when—this was—as soon as I heard the rumor that abuse was going on in Guantanamo, I acted, every single day, until the rescission of those interrogation authorizations were made by Secretary Rumsfeld, approximately 3 weeks later. But, when I saw the December 2nd Rumsfeld memo, and then reviewed Lieutenant Colonel Beaver's legal memorandum, when I saw that the memorandum was completely unbounded concerning the limit of abuse that could be applied to the detainees, I knew instantaneously, sir, that this was a flawed policy decision based upon inadequate legal analysis.

Senator GRAHAM. Is it fair to say, some of the senior judge advocates shared that view?

Mr. Mora: Sir, every judge advocate I've ever spoken to on this issue shares that view.

Senator GRAHAM. Given what you know about the way we're doing business now, do you think we're in the right place?

Mr. Mora: Senator, I'm not current on what the actual policies and practices are today. My impression is that the military is in the right place. I have doubts about the intelligence community, however.

Senator GRAHAM. Thank you. All right.

Nothing further.

Chairman LEVIN. Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

Lieutenant Colonel Beaver, let me start with you, if I may. Just for clarification, you did not attend that September '02 conference up at Fort Bragg.

Colonel Beaver: No, I did not.

Senator PRYOR. And you really don't know, really, the purpose of that congress—conference? For example, you don't know if it was recommended there that we use these SERE techniques in an offensive manner. You don't know anything about that, right?

Colonel Beaver: I think what I knew at the time was that the psychological—or, we called them the "Biscuits," the Behavioral Science Team, which was a psychiatrist and, I believe, a psychologist, would gain benefit by talking to their counterparts at the SERE school, and that also the—I think the military intelligence contingent that went was there on a so-called factfinding mission.

Senator PRYOR. And is it your view that the purpose of that factfinding mission was to try to take some of the techniques, et cetera, from SERE and begin to use them offensively against detainees?

Colonel Beaver: To see if any of the techniques were—should be considered to be used, yes.

Chairman LEVIN. Could you put your microphone, Colonel, much closer to your mouth? Thanks.

Colonel Beaver: Sorry.

Senator PRYOR. Yeah, that's an important question. In other words, your understanding at the time was, part of the purpose, at least, of that conference was to see if you could apply the SERE techniques to the detainees at Guantanamo.

Colonel Beaver: I believe, based on what General Dunlavey told us at a staff meeting after the fact, I mean after the participants had gone there, that that was—his purpose was to find out what could be used and—because he was looking at sending up a request for additional techniques. So, yes.

Senator PRYOR. Okay. That's interesting. Let me ask this. In your opening statement, you said, quote, "In short, the interrogation techniques discussed in my legal opinion would not have been conducted in an abusive or unlawful manner if the approval and control procedures I outlined were followed," end quote. So, are you saying that water boarding should—is justified, as long as there's the proper controls there?

Colonel Beaver: No, what—what I meant was—I didn't approve anything; I wrote a legal opinion. So, whatever the commander—well, as it turned out, the SECDEF—approved, it would be applied in a manner to prevent it from being used abusively. So, the SECDEF never approved water boarding, so it was never anything that was considered. But, I did not—I was not the approval authority. And so, I—I think what I was trying to refer to was that an aggressive interrogation had to have a legal review; you know, there had to be a full—you know, the medical team, everyone had to be involved before you could apply a plan, because it has to have a purpose. It can't be sadistic; it has to be for a governmental purpose. This isn't about just doing something because you can; it's about eliciting intelligence.

Senator PRYOR. Okay.

Colonel Beaver: So, if we had a plan in place that had been reviewed and approved by the commander, and—again, assuming whatever had been approved by, in this case, the SECDEF—then you would have a lawful interrogation plan, conducted lawfully, not abusively.

Senator PRYOR. Okay. Let me ask—you've referred to this legal opinion. Are you referring to the October 11, 2002, opinion signed off on by General Phifer?

Colonel Beaver: Jerry Phifer is—

Senator PRYOR. Jerry—

Colonel Beaver:—a Lieutenant Colonel—

Senator PRYOR. I'm sorry.

Colonel Beaver:—J-2.

Senator PRYOR. Colonel Phifer, yes. Is that the memo—

Colonel Beaver: That's my—

Senator PRYOR.—that you're—

Colonel Beaver:—legal opinion, yes—

Senator PRYOR. Okay.

Colonel Beaver:—sir.

Senator PRYOR. So, in other words, you drafted that.

Colonel Beaver: With—yes. I mean, I—ultimately, I had some subordinates—

Senator PRYOR. Okay.

Colonel Beaver:—that helped me, but I signed off on the final.

Senator PRYOR. All right. Let me ask, if I can—at tab 7, there's a memo that we've referred to already. It's tab 7, it's a 5-page memo, and I'm going to go right to page 2 of 5. And at the beginning of the memo, it says, "The following notes were taken during

the aforementioned meeting at 13:40 on October 2, 2002. All questions and comments have been paraphrased.”

Colonel Beaver: Yes, sir, that was done by the Criminal Investigation Task Force personnel.

Senator PRYOR. And you referred to this with Senator Levin, and that it is a paraphrase, and you don't know how accurate it is. Some of this, you don't recall. Is that right?

Colonel Beaver: Not from 6 years ago—

Senator PRYOR. Yeah.

Colonel Beaver:—no, sir.

Senator PRYOR. When did you first see this memo?

Colonel Beaver: I think, March, before I spoke to the Senate staff.

Senator PRYOR. Okay, so in the last year, sometime this year?

Colonel Beaver: This past March.

Senator PRYOR. Okay. Do you—in terms of—you've reviewed this memo, right?

Colonel Beaver: I've seen it, yes, sir.

Senator PRYOR. And do you have any questions about the accuracy of your statements in there? I mean, do you have a—

Colonel Beaver: There's no way for me to know if my statements are accurate, because it's 6 years ago, and there's no way for me to recollect what I exactly said or how the CITF personnel chose to phrase a particular issue or the importance they put on it. So, I don't ascribe any malintent towards them, but I'm just saying there's no way for me to say what they are saying is accurate.

Senator PRYOR. Well, let me ask about an impression I have, and that is on page 3, for example. You come across in this as being eager to have these techniques used. Colonel Cummings says, “We can't do sleep deprivation.” You say, “Yes, we can, with approval.” And then, I think this next statement is attributed to you, although it's not clear. It says, “Disrupting the normal camp operation is vital. We need to create an environment of controlled chaos.” You know, and we could go down through some of the statements in here. But, at that time, do you remember, were you trying to get to the answer that we could use these SERE techniques against the detainees?

Colonel Beaver: I can say that the—my counterparts in the Criminal Investigation Task Force were very unhappy with these—this line of discussion. I offered them, always, to participate. I offered them to write their own legal opinion, which they never did. They wrote a policy piece, which—I understood the policy concerns already, but I never received any legal objections based in the law. I—so, I know that they were all very unhappy with me at that point.

Senator PRYOR. Unhappy with your conclusions?

Colonel Beaver: With me having discussions at all about aggressive interrogation techniques. They—

Senator PRYOR. In other words, they did not like this policy direction that—

Colonel Beaver: No, they wanted the law enforcement techniques only, and so you had the clash of law enforcement and intelligence interrogators, which—they saw their role as being the one that should be taken. So—

Senator PRYOR. Well, let me ask this. And you talked—there's a conversation in here about sleep deprivation, and you—you're quoted as saying—I mean, again, I know this is—

Colonel Beaver: Right, I understand.

Senator PRYOR.—paraphrased—you're paraphrased as saying—

Colonel Beaver: Yes.

Senator PRYOR.—“True, but officially it is not happening. It is not being reported officially. The ICRC is a serious concern,” which is the Red Cross.

Colonel Beaver: Uh-huh.

Senator PRYOR. So, it sounds to me like, in addition to advocating this, you maybe were trying to cover this up, as well.

Colonel Beaver: No, sir. The—I was the liaison to the ICRC, and I worked very well with them. I believe—and, again, it's hard to reconstruct something 6 years later—if you have someone in active interrogation, and then the ICRC visits and wants to see that person, you can't stop your interrogation to take them out, and disrupt what you're trying to do. And so, at different times, the ICRC would be down there; and so, they would be there for 6 weeks and leave. So, I can only, I mean, hazard that what I was referring to is, if you're going to do, like, a more intense interrogation that would last a longer period of time, you had to make sure that you had the time to do it, and that you weren't disrupted.

Senator PRYOR. And did—and when you say “disrupted”—in other words, you would rather not have the ICRC—

Colonel Beaver: No, they had access to the—they talked to all the detainees. But, if you're in the middle of an interrogation and they want access to a particular detainee, you can't disrupt your interrogation to have them be interviewed by the ICRC.

Senator PRYOR. Let me ask this, because I'm just about out of time. In response to one of Senator Graham's questions, you said that you were not that familiar with UCMJ? It seems—

Colonel Beaver: No, I said I wasn't a military law expert. We have experts in the Army who do this for a living, and my hope was that, when my opinion went up to General Hill, that my concerns about military personnel being involved with these aggressive techniques would be appropriately addressed by people who do this full time. We call it TCAP. But, the—anyway, the people that look at these issues and would have the time and the resources to address those issues. But, I was very concerned about the military.

Senator PRYOR. In—this will be my last question, Mr. Chairman; thank you for your patience—but, in your legal analysis at the time, did you look at the UCMJ? Did you look—

Colonel Beaver: Yes.

Senator PRYOR.—did you look at U.S. Law?

Colonel Beaver: Yes, sir.

Senator PRYOR. Did you look at the U.S. Constitution?

Colonel Beaver: Yes, sir.

Senator PRYOR. Did you look at the Geneva Conventions? Did you look at the Army Field Manual?

Colonel Beaver: Yes, sir.

Senator PRYOR. And do you have memos or documents with your legal analysis based on your review of all those materials? And have you provided those to the committee?

Colonel Beaver: I don't have—whatever was retrieved from GTMO, the committee would have. I was not—6 years later—I mean, I didn't take things with me. It was classified. So, whatever I used came from human rights courts opinions, all sorts of things. But, that would have been what the—what—if DOD had it, DOD would have provided it. But, the legal opinion was what my analysis provided on those issues.

Senator PRYOR. In other words, did you keep—at GTMO, did you keep a file with all your legal research in it?

Colonel Beaver: I don't know if someone would have kept it, 6 years later.

Senator PRYOR. But, did you have one?

Colonel Beaver: At the time, yes, it was on the—

Senator PRYOR. Did you have one?

Colonel Beaver:—it was on a shared SIPRNet, a secured network.

Senator PRYOR. And you don't know if that's been provided to the committee?

Colonel Beaver: Well, I would have no idea. I left GTMO in 2003.

Senator PRYOR. Thank you.

Colonel Beaver: But, I provided the basis for it in the opinion, so you would have seen citations to the various things that I looked at.

Senator PRYOR. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Pryor.

Senator WARNER?

Senator WARNER. Thank you, Mr. Chairman.

I thank this panel for their contribution to this very serious issue.

I'd like to address my questions to Admiral Dalton. Firstly, may I congratulate you on a very distinguished career in the United States Navy, and to have, as a consequence of your professional abilities, recognized and were given the first flag rank in the long history of the Navy JAG Corps. Am I not correct?

Admiral Dalton: Yes, sir. For a woman, yes, sir.

Senator WARNER. That's a great commendation—

Senator WARNER. Thank you.

Admiral Dalton:—to you.

Senator WARNER. I listened very carefully to your testimony today, and I'd like to start off by referring to the Vanity Fair article, which I presume you've read more than once. And on page 13 of the 17 pages, "At the level of the Joint Chiefs, the memo should have been subject to a detailed review, including close legal scrutiny by Myers' own counsel, Captain Jane Dalton. But, that never happened. It seems that Jim Haynes short-circuited the approval process. Albert Mora, the general counsel of the Navy, says he remembered Dalton telling him," quote, "Jim pulled us away. We never had a chance to complete the assessment," end quote.

Now, having spent some wonderful years, myself, in that building at the Department of the Navy, I have always found, historically, going back to the times of George Washington, we have civilian control of the military. And that's the way it should be. And it has functioned, and functioned well, throughout the history of our country. But, within that structure, there's a certain amount

of independence that's accorded the chiefs of the various military branch—chief of naval operations, so forth. And then, when we structured the JCS organization and the Chairman was designated, he was sort of the focal point of the chiefs. And his responsibility is the chief military advisor to the Secretary of Defense and the President.

What interests me is the degree to which the chiefs at that time exercised their independence. This committee—and I was privileged to be a part of the committee and very active in writing Goldwater-Nichols, and that was the law at the time this situation occurred, and that gave an avenue by which members of the JCS—indeed, the Chairman—if they had disagreements with certain policy matters, could address them directly to SECDEF and, if necessary, to the President. You're familiar with that procedure. Have I stated it correctly?

Admiral Dalton: Yes, sir.

Senator WARNER. Was any consideration given at that time by the senior military, either the Chairman or members of the Tank, to exercise the rights under Goldwater-Nichols to bring to the attention of higher authority their concerns about this policy change?

Admiral Dalton: Senator, I'm not sure what policy change—

Senator WARNER. Well, the use of aggressive—more aggressive techniques for the detainees at GTMO, the memorandum that we've been discussing here in some detail.

Admiral Dalton: Yes, sir. At the—well—

Senator WARNER. In other words, this article—and I think you've confirmed it's correct—you stopped your analysis, which you were doing for the Chairman—at that time, Richard Myers, am I correct?

Admiral Dalton: Yes, Senator.

Senator WARNER. All right. Now, to me, that was a variance in normal procedures, and the Chairman was entitled to the benefit of your professional expertise and knowledge in your own independent legal analysis. He had a—I think, a duty, as Chief, to go into the Tank and discuss it. Was it ever discussed in the Tank?

Admiral Dalton: Senator, let me just clarify. When the memo came in from General Hill asking for the enhanced techniques on—the memo was distributed to the services, and the services, as has already been mentioned, provided their inputs.

Senator WARNER. Correct.

Admiral Dalton: They asked for—they—the services—

Senator WARNER. Now, the “they” being the services “asked for”?

Admiral Dalton: That's—

Senator WARNER. I want to define—

Admiral Dalton: Yes, sir.

Senator WARNER.—who “they” is.

Admiral Dalton: I'm sorry. Yes, sir. The services sent in responses to the Joint Staff tasker asking for inputs on the General—

Senator WARNER. Right.

Admiral Dalton:—Hill memo. All of the services expressed concerns about the techniques that were listed in the memo. They also expressed their understanding and appreciation for the need for intelligence, and good intelligence.

Senator WARNER. Correct.

Admiral Dalton: And then they—my recollection is that all four of them suggested that there needed to be further legal and policy review, as General Hill had suggested in his memo.

Senator WARNER. Correct.

Admiral Dalton: And so, the next step, then, was to proceed with a larger general and policy review, which is what I intended to do.

Senator WARNER. Correct. And in—not only intended, but you initiated.

Admiral Dalton: I initiated—yes, that's right, Senator. On—when I learned that Mr. Haynes did not want that broadbased legal and policy review to take place, then I stood down from—

Senator WARNER. All right.

Admiral Dalton:—the plans—

Senator WARNER. Let's now clarify exactly how you were told to stand down. Was it in writing, or was it verbal?

Admiral Dalton: It was not in writing, Senator, and my—the best of my recollection as to how this occurred is that the Chairman called me aside and indicated to me that Mr. Haynes did not want this broadbased review to take place, and that I should not continue to interact with—I mean, the Chairman's words were not this detailed; it was a very brief meeting, where he called me aside and said, "Mr. Haynes does not want this process to proceed."

However, that did not mean that I then stopped doing all legal analysis or all legal review. I continued to engage with Mr. Haynes's office. And this is the piece that I think is—not necessarily been clear, is that when I stopped the analysis that would have included the services and the Defense Intelligence Agency and Fort Huachuca and all of those various agencies, nevertheless, I continued to work with General—with Mr. Haynes's office and with the Chairman, in terms of reviewing and analyzing General Hill's request.

So, the—at that time, there was no perceived need to go to the chiefs and complain about anything, or to the President and complain, or the Secretary, because the process was still proceeding, in that I understood that this was a very sensitive issue, that Mr. Haynes wanted this to be held very close-hold, and I believed that his prerogative as the chief legal officer of the Department was to have his office take the lead; I would provide support to the Chairman and work with Mr. Haynes's office.

Senator WARNER. Well, when he created the final product, what was your professional analysis, at that time, and advice to the Chairman?

Admiral Dalton: Sir, based on the discussions and the interaction that I had had with Mr. Haynes's office, with Guantanamo, with SOUTHCOM, I believed that the techniques that the Secretary approved, in the context in which they were discussed and in which he approved them, could, in fact, be conducted humanely, in accordance with the President's—

Senator WARNER. "Humanely"? Is that the word you used?

Admiral Dalton:—yes, Senator, "humanely"—in accordance with the President's direction that the detainees were to be treated humanely.

Senator WARNER. And did you feel they were consistent with international and domestic law and other laws of the United States?

Admiral Dalton: If they were conducted consistent with the discussions that we had had, in terms of the oversight, the supervision by the commander, with, in fact, supervision by the staff judge advocate, and, again, in the context in which they were discussed.

And let me explain, if I may, that the removal of clothing was not nudity. There was never a discussion that that would involve nudity. The use of military working dogs was not to have working dogs in an interrogation booth, unmuzzled and snarling at detainees. That's not what the Secretary approved. The use of stress techniques was limited to standing for 4 hours. That—so, when you put all of these factors together with the oversight, with the fact that the President had mandated that the detainees be treated humanely, then I believe that, in fact, they could be conducted—those techniques could be conducted consistent with both international and domestic law.

Senator WARNER. It's noted in this article that General Myers made a point that, "My initials are not on the document." Does that indicate that he had some reservations about this? And did he express some of those reservations with you? It says, "Normally, he would have initialed a memo to indicate approval, but there was no confirmation that Myers had seen the memo or formally signed off on it."

I can't digest this that quickly. Can you clarify that at all?

Admiral Dalton: Just one second, sir, please. [Pause.]

Senator WARNER. What's this? Who handed me this? What's this? Who handed me—and what am I supposed to do? What's it say?

Would you finish? I'm sorry, I—

Admiral Dalton: Excuse me, Senator.

Senator, in the days leading up to the—to Mr. Haynes's memo of the 27th of November, which was then approved by the Secretary on the 2nd of December, there were meetings on—at the Secretary of Defense level, involving General Myers, involving Mr. Haynes and myself. In those meetings, we discussed the various techniques, the safeguards that would be applied. And my understanding and my recollection is that General Myers was satisfied with the techniques that the Secretary approved.

Senator WARNER. All right, thank you. My time is up.

Chairman LEVIN. Thank you, Senator Warner.

Senator Reed?

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

Admiral Dalton, as you've indicated in your testimony, when you received the request—when General Myers received the request, the Joint Staff solicited the opinion of service JAGs. And you say they raised concerns, but these are very significant concerns. The Army JAG said that the stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress crosses the line of humane treatment.

The chief legal advisor of the Criminal Investigation Task Force at Guantanamo said that certain techniques may subject servicemembers to punitive articles of the UCMJ.

The Air Force said that the techniques may fail to meet requirements, quote, "to treat detainees humanely."

The Marine Corps said several techniques arguably violate Federal law and would expose our servicemembers to possible prosecution.

Admiral Dalton: Yes, sir.

Senator REED. That was an accurate summary?

Admiral Dalton: Yes, Senator.

Senator REED. Did you make General Myers aware of all those concerns?

Admiral Dalton: Senator, my recollection is that the decision-makers were aware that there had been concerns—

Senator REED. No, I'm asking you specifically, as the counsel to the Chairman of the Joint Chiefs of Staff, did you make him fully aware of the various serious concerns that were raised by uniformed officers of the United States military?

Admiral Dalton: Senator, I don't recall the specific conversations that I had with the Chairman, but, as my—it is my recollection that he was aware of these concerns and that I made him aware of those concerns, yes, sir.

Senator REED. Did he make Mr. Haynes aware of those concerns?

Admiral Dalton: I don't know, sir. I—Senator, I—in the conversations that we had and the meetings that we had, my recollection is that those concerns were taken into account and addressed as a part of the overall context of the conversations. I don't recall that anyone specifically pulled out memos and showed the memos, but that we were aware that there were concerns, and those concerns were addressed in our discussion of the safeguards and the way that the techniques would be implemented.

Senator REED. You just said that you continued discussions with Mr. Haynes, although you were told—and let me—again, I think you made it very clear, you were essentially told, through General Myers, to stop any formal legal analysis to reach a formal conclusion. Is that correct?

Admiral Dalton: I was told to stop the broadbased legal review that would—and policy review—that would have involved the services and the other agencies, like Fort Huachuca and DIA. I was told to stop the broadbased analysis.

Senator REED. But, you were told—or, not dissuaded by General Myers to continue to evaluate all of these options in conjunction with Mr. Haynes.

Admiral Dalton: I'm sorry, sir, I didn't understand—General Myers did not prevent me from continuing the discussions with Mr. Haynes, sir.

Senator REED. So, you—were you privy to all discussions with Mr. Haynes on these topics?

Admiral Dalton: I'm sure I was not, sir.

Senator REED. So, selectively, you participated. In your—well, you participated in—not in every discussion, but in "several discussions" is fair.

Admiral Dalton: Yes, Senator, I—yes, sir.

Senator REED. And did you raise these concerns? Not in the—in citing formal memoranda, but raise specific concerns, the violation of UCMJ?

Admiral Dalton: Senator, I don't—again, I have a hard time recalling the specifics of any particular conversation in a particular meeting. I believe these concerns were known and addressed, and in the—as I said before, in the context of the meetings and the conversations that we had, we recognized that there were issues related to UCMJ concerns, there were issues related to Federal- and domestic-law concerns, as well as international law.

Senator REED. And you were satisfied that—you were satisfied these concerns were fully addressed by Mr. Haynes, or by someone.

Admiral Dalton: I was satisfied—yes, Senator, I was satisfied that the—in the context of the discussions we had, that those concerns were addressed.

Senator REED. You mentioned the fact that—and, I think, in response to Senator Warner—that General Myers signed off on the techniques.

Admiral Dalton: Yes, sir, he's—I'm sorry, he—as stated in—

Senator REED. He failed—

Admiral Dalton:—Mr. Haynes's memo—

Senator REED.—to object.

Admiral Dalton:—as stated in Mr. Haynes's memo, he agreed that the approval of those techniques could be conducted consistent—

Senator REED. Right.

Admiral Dalton:—with—

Senator REED. You read Mr. Haynes's memo?

Admiral Dalton: Yes, Senator.

Senator REED. At the time it was released? Contemporaneous with the release?

Admiral Dalton: Shortly after the release.

Senator REED. Did you have any questions about the legal sufficiency of this memorandum?

Admiral Dalton: I specifically did—I was not asked to opine, and I don't recall that I opined—

Senator REED. But—

Admiral Dalton:—on the details, but I—there was one phrase in the memorandum which said that, arguably, all of the techniques would be legal or authorized, including the three that were not authorized. I did not—I was not asked to opine on the memo, but I did not necessarily believe that that was correct.

Senator REED. Did you feel you had an obligation to General Myers, since he was referenced in this memo, as concurring or at least giving some non-objection to advise him that there were elements here that you thought had serious legal problems?

Admiral Dalton: Sir, I wasn't aware of the memo until after Mr. Haynes had initiated it and the Secretary had signed it. It was shortly—

Senator REED. Well, I—but, if it—if the legal—if the memorandum had legal conclusions that you significantly disagreed with, didn't you feel an obligation to at least make General Myers aware of this?

Admiral Dalton: After the fact, Senator?

Senator REED. Sure.

Admiral Dalton: Since the Secretary had not authorized those techniques, I didn't feel that it was necessary to go into a lot of detail with the Chairman about whether or not every word in the memorandum was correct. The Secretary authorized less than the full category of techniques, and that's what I was satisfied with and what General Myers was satisfied with.

Senator REED. The memorandum essentially said that all these techniques are legal, the category-3 techniques, but, as a matter of policy, we're not going to have a blanket approval.

Admiral Dalton: Right. Yes, Senator.

Senator REED. Leaving it up to—leaving the issue that these are legal techniques—at least the official opinion endorsed by the Secretary of Defense is, these are legal techniques, correct?

Admiral Dalton: I would not—

Senator REED. What did—

Admiral Dalton: I'm sorry.

Senator REED. No, I—go ahead. Excuse me.

Admiral Dalton: Senator, I would not say that that was the legal opinion endorsed by the Secretary of Defense. The Secretary of Defense was approving the use of particular techniques. As to whether or not other techniques might or might not be legal, if the combatant commander wanted to use those techniques, he would then have to come up and ask, and there could then be a separate and additional review. It was not necessary—

Senator REED. Well—

Admiral Dalton:—to reach that question, given that the Secretary approved the ones that he did.

Senator REED. But, the only reason that this is not a blanket approval is a matter of policy, not of law. As I read this, category-3 techniques may be legally available, but, as a matter of policy—that's what this—what it says, essentially. And you—

Admiral Dalton: Yes—

Senator REED.—you didn't think—you thought that was an appropriate legal analysis?

Admiral Dalton: No, sir, I did not think that was an appropriate legal analysis. I did not think it was necessary to engage on that subject, since the Secretary had already approved the techniques, and that was the—that was what we were providing to the combatant commander.

Senator REED. You are aware of Lieutenant Colonel Beaver's memorandum, is that correct?

Admiral Dalton: I am, Senator.

Senator REED. You read it?

Admiral Dalton: I did, sir.

Senator REED. In her memorandum, she said, "Regarding Uniform Code of Military Justice, the proposal to grab, poke in the chest, push lightly, and place a wet towel or hood over the detainee's head would constitute a per-se violation of Article 128 assault." One of the techniques that you approved was pushing or poking lightly. Do you disagree with her analysis?

Admiral Dalton: I disagree with that analysis, yes.

Senator REED. How about Article 93 of the UCMJ, which forbids maltreatment of anyone under the control of military personnel?

Admiral Dalton: Senator, I did not view light pushing and poking with a finger to be maltreatment.

Senator REED. All right. What—so, you would also disagree with Colonel Beaver in her suggestion that, because of the potential violation of UCMJ, there would have to be some type of immunity or—you disagree with that.

Admiral Dalton: That's correct, sir. I don't believe that's correct.

Senator REED. Mr. Mora, what's your view with respect to Article 128 and Article 93 of the UCMJ?

Mr. Mora: Senator, I'm not a specialist in that area. I never focused on those specific matters. My concern with the memorandum is that it did not include a bright line of abuse which could not be transgressed. For example, you look at Lieutenant Colonel Beaver's memorandum, and nowhere does it say that, "You may engage in these tactics just until you reach the point where it reaches cruel, inhuman, and degrading treatment, and you may go no further." Because there was no such boundary anywhere in the memorandum, it was all subject to abuse.

Senator REED. Colonel Dalton, I have a final question. Part of your rationale for agreeing with the conclusion is the fact that you object—and you've indicated certain objection to techniques that may or may not have been approved legally by Mr. Haynes. But, you keep citing the "conditions." Where, in any of these materials, are there those conditions, as Mr. Mora refers to, that would give specific guidance? I don't think the Secretary of Defense signed a memorandum that talked about the conditions. Are you aware of those conditions that he approved?

Admiral Dalton: Senator, the conditions were in several different contexts. In the Colonel Phifer memo that came up, it specifically said—that was attached to General Hill's memo, Colonel Phifer's memo was the one that listed the techniques—and that one made it clear that the use of the techniques, at least the category-3 techniques—

Senator REED. Well, the Phifer memo said they were needed. Where is there a direction of the Secretary of Defense that these are mandatory as part of the use of these techniques?

Admiral Dalton: The only thing in writing from the Secretary of Defense was his approval of Mr. Haynes's memo. My—as—there were meetings leading up to the Secretary's approval of the memo, and the context of the conversation was—and of the discussions—were one particular detainee, the particularly high-value detainee who had resisted. I mean, it was in the context of the discussions.

Senator REED. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Senator McCaskill?

Senator MCCASKILL. Let me start by saying how proud, as an American, I am of you, Mr. Mora. It's—courage comes in all forms, and you showed great courage.

Let me cut to the chase here and see if we can reach some agreement.

Ms. Dalton and Ms. Beaver, do you both believe that putting a group of detainees together completely naked, hooded, and siccing dogs on them is legal under the UCMJ or anything else that our military should be paying attention to? Do you think that's legal?

Admiral Dalton: Senator, I don't believe that's legal, and that was never approved by the Secretary of Defense.

Senator McCASKILL. Okay. Ms. Beaver, do you think that's legal?

Colonel Beaver: No, ma'am, and it never occurred at GTMO.

Senator McCASKILL. Okay. All right. Well, I'm reading this legal memo, and I'm reading the memo by Mr. Feith. Now, I've got to tell you—you're both trained lawyers, correct?

Colonel Beaver: Yes, ma'am.

Senator McCASKILL. And you both know that words matter a lot in the law. The difference of one word can make a huge impact on a legal analysis, and that's what you're trained, as a lawyer, to understand. Is that correct?

Ms. Beaver?

Colonel Beaver: Yes.

Senator McCASKILL. Dalton?

Admiral Dalton: Yes, Senator.

Senator McCASKILL. All right. I'm looking at this memo. It says, "removal of clothing," under category 2. And it says, under category 2, "using detainee phobias, such as fear of dogs." Now, I'm trying to figure out, as a lawyer, how removal of clothing and using fear of dogs does not envision naked people—and, by the way, the hood's in there, too—naked people having dogs sicced on them. How does not—that not occur to either of you, that that might be envisioned?

Colonel Beaver: Because, ma'am, in the discussions that the staff had, when you develop a plan, a professional plan of interrogation, there are limits and there are conditions, and there—you know, there's command approval. And if somebody said, "Let's sic the dogs on 'em," that would have never happened. I mean, that's just not professional. That indicates something—

Senator McCASKILL. But, it did happen.

Colonel Beaver: It did not happen, ma'am.

Senator McCASKILL. Well, dogs were used with naked people.

Colonel Beaver: Dogs—well, in the context that you're saying it, I'm not aware that that ever happened at Guantanamo Bay, Cuba.

Senator McCASKILL. I'm not talking about Guantanamo Bay. I'm talking about within—

Colonel Beaver: Well—

Senator McCASKILL.—our military.

Colonel Beaver: My—

Senator McCASKILL. It happened.

Colonel Beaver: My experience is Guantanamo Bay, Cuba. And so, I can't comment on how it came to be that—

Senator McCASKILL. Ms. Dalton, can you—

Colonel Beaver:—this happened—

Senator McCASKILL.—comment—

Colonel Beaver:—in Iraq.

Senator McCASKILL.—how it happened?

Admiral Dalton: No, Senator. Those techniques that we're talking about were approved for Guantanamo Bay, and Guantanamo Bay only. They did not involve nudity, they did not involve—

Senator McCASKILL. Well, you say it—

Admiral Dalton:—siccing snarling dogs—

Senator MCCASKILL.—doesn't involve nudity. It says "removal of"—

Voice: Can I ask that the witness be allowed to finish her answer before the question comes again?

Senator MCCASKILL. I apologize. Go ahead, Ms. Dalton.

Admiral Dalton: Senator, as I was saying, the techniques approved by the Secretary did not involve nudity, they did not involve siccing snarling dogs on detainees.

Senator MCCASKILL. All right. "Removal of clothing." Now, when you—

Colonel Beaver: Well, ma'am—

Senator MCCASKILL.—were discussing the safeguards, Ms. Dalton, with—in these discussions you had about safeguards, did anybody talk about putting in the word "all"? "Not allowed"? I mean, did anybody talk about that phrase, that removal of clothing—if I saw "removal of clothing," and I was trying to get information out of a detainee, there's nothing there that says "removal of some clothing." It says "removal of clothing." How would anyone know, from that guidance, that nudity was not allowed?

Admiral Dalton: Senator, that was one of the specific questions that was addressed in discussions with Guantanamo, with General Miller, and with others concerning these techniques. I specifically recall that we had discussions about that particular issue, and General—the people I spoke with—and my recollection is that it was General Miller—said it did not involve nudity.

Colonel Beaver: Right.

Senator MCCASKILL. Well, it doesn't say that. There's nothing in this, as a legal analysis, as a lawyer, that would tell you that nudity is prohibited. It says "removal of clothing." It doesn't say "removal of some clothing." It just says "removal of clothing." So, I don't understand how that is a safeguard.

Let me ask you about this concept I talked about with the last panel, advance immunity. Are you aware of any concept in the law, Ms. Dalton, concerning immunity in advance?

Admiral Dalton: I'm not.

Senator MCCASKILL. And did you read that phrase in Lieutenant Colonel Beaver's legal opinion?

Admiral Dalton: I did.

Senator MCCASKILL. And did it jump out at you?

Admiral Dalton: It was one of the—yes, Senator, it did. It was one of the issues in the legal memo that I thought were not—was not accurate or correct.

Senator MCCASKILL. Did it concern you that a legal opinion that people were relying on contained a concept that, on its face, would be illegal, which it would be, to give somebody immunity in advance?

Admiral Dalton: Senator, that's why General—my—that's my understanding of why both Colonel Beaver and General Hill asked for additional legal and policy review. That's why we—I believe that there needed to be additional legal and policy review at the Joint Chiefs or at the OSD general counsel level.

Senator MCCASKILL. Okay. Your opinion—and, by the way, Lieutenant Colonel Beaver, I feel for you today. I think—this is hard, and I think you're a good American, and I think that you were

asked to do something. And I don't really understand how it happened. My job is to figure that out and try to make sure it never happens again.

I'm reading from your legal memo, where you say, "I agree"—you say, "The proposed strategies do not violate applicable Federal law." Do you still stand by that opinion?

Colonel Beaver: At the time I wrote that opinion, the law was such that I believed that the law allowed a lot. I'm not talking about policy. I'm talking about the law at that time, with the Geneva Conventions not applying. And if you would look at European Human Rights Courts opinion, when you mention "hoods," frequently even the European Human Rights Courts would tell you that—I'm not advocating anything, I'm telling you hoods are allowed in interrogation.

Senator MCCASKILL. Okay.

Colonel Beaver: And so, even in decisions by the European Human Rights Courts, which I looked at—for example, hooding, by itself, is allowed and is not cruel, and it also is not torture. So, I tried to weigh all of these things, but I understood that I was at the bottom of the bottom of the food chain, and that I might not have all the facts, and I might not be aware of all the issues. I didn't think of many of the things that I later saw in the opinion—the 50-page opinion written by the Department of Justice. So, I was confident that if this got off the island, and then it went to a command that was in CONUS, like SOUTHCOM, where it could be looked at by people who were not directly involved in the interrogation of—in the instance of this HVD, that we thought might have knowledge about another attack against the United States—that the right policy decision would be made.

And on the military justice point, I did not artfully craft that section, and that's the only part of my opinion I regret, because I was trying to highlight my extreme concern for the military personnel under the command of Major General Miller, that if techniques weren't lawful, that military police personnel, in particular, could find themselves maybe—be prosecuted later. And so, I did not draft that very well, and I admit that. But, for me, it was a red flag to people like Captain Dalton, at the time, to say, "I'm very concerned about the military personnel. Please take a look at this." And, unfortunately, Colonel Superville never responded, so I never got any feedback until—

Senator MCCASKILL. Right.

Colonel Beaver: —the SECDEF's memo—

Senator MCCASKILL. No, I get what happened here. You did—you felt you were at the bottom, and you needed to move it off the island, and somebody, I think you said, in a calm and rational way, was going to look at it. The scary thing for me is that you put your name on it as the lawyer —

Colonel Beaver: Absolutely.

Senator MCCASKILL. —who was asked to give a legal opinion, and then, of course—

Colonel Beaver: Absolutely.

Senator MCCASKILL. —everyone wanted to glom on your opinion, because—why should they have to take the heat if you'd already done it for 'em? And here's what I want to—like, I want to—if I

can, before—I know my time’s up, but let me just finish this point. You have said—in your statement, you have said, in interviews with the staff, that you didn’t feel pressure from anyone.

Colonel Beaver: I did not, ma’am.

Senator MCCASKILL. Okay. I’m trying to figure this out. You said in your memo, “The proposed strategy is not violative of applicable Federal law,” but the whole phrase is, “agree that proposed strategies do not violate Federal law.” Who were you agreeing with?

Colonel Beaver: I’m not sure. It was my opinion. I don’t recall that phrase. I’m sorry. I just—

Senator MCCASKILL. Yeah. Well, that’s what you said. You wrote, “I have reviewed the memorandum, and I agree that the proposed strategies do not violate applicable”—

Colonel Beaver: Oh, that’s just my—

Senator MCCASKILL. —“Federal law.”

Colonel Beaver: —personal opinion. Perhaps I just didn’t write that artfully. But, I—my opinion is that it doesn’t violate the law.

Senator MCCASKILL. Okay.

Colonel Beaver: And that’s with—I had built-in conditions. I had built-in safeguards with legal opinion, medical involvement, and so forth. And so, it was not a blank check. It was from—what was from my view. If we did this professionally—there was a legitimate government purpose, there were safeguards—then there wouldn’t be abuses. And, because interrogation is always a gray area, you—unlike what Mr. Mora says with—there weren’t these specific conditions—you can’t come up with all the conditions of an interrogation that, ahead of time, you can say, “When it comes to 4 days,” I don’t know—anyway, and so, I knew that if you would do these reviews and have these safeguards in place for these interrogations, that the law would be met. And I felt very strongly about that, and I believed in my colleagues from the intelligence community, that we would not allow the law to be violated or detainees to be harmed. And I still believe that today. And that’s why I believe there was no violation of the law at GTMO, despite what others may believe.

Detainees were beaten to death at Bagram, Afghanistan. That happened in December, before the SECDEF even had time to get out something, and those—

Senator MCCASKILL. Well, it’s a—

Colonel Beaver: —detainees were beaten to death. So, it’s—

Senator MCCASKILL. I—

Colonel Beaver: —more than just—it’s more than just—

Senator MCCASKILL. It’s a—

Colonel Beaver: —what I said.

Senator MCCASKILL. You know, honestly, it’s a sad day in this hearing room when we say, “Well, it’s not that bad. At least they weren’t beaten to death.”

Colonel Beaver: No, I didn’t say that, ma’am.

Senator MCCASKILL. Well, it—

Colonel Beaver: They did not—

Senator MCCASKILL. —sounded that way.

Colonel Beaver: —the law was not violated at GTMO. Detainees were not abused. They were treated humanely within the bounds of the law.

Senator McCASKILL. Well, we're—what we're trying to do—and I—my time's up, and I'll wait for my next round, Mr. Chairman.

Chairman LEVIN. Thank you.

Senator Graham?

Senator GRAHAM. Thank you.

Colonel Beaver, it's my understanding that the Schmidt- Furlow report found that, in October 2002, that a military working dog was used as part of an interrogation of a high- value target, and the dog was brought into the room, directed to growl, bark, and show the teeth at the detainee. Is that correct?

Colonel Beaver: I only heard that later. I was not aware of it at the time. My understanding of the use of the dogs, because they were bomb dogs, they were not protection dogs, were that, by roaming the perimeter—

Senator GRAHAM. When did you leave Guantanamo?

Colonel Beaver: June 2003, sir.

Senator GRAHAM. So, this—were you there in October of 2002?

Colonel Beaver: No—yes, sir, I was there. I said, at the time, I was not aware that that happened. I found out about it later. I—my understanding—

Senator GRAHAM. Do you doubt—do you doubt that it happened?

Colonel Beaver: If an investigator found that it happened, I—I'm not disputing that, I'm just saying I was not aware of it at the time.

Senator GRAHAM. Well, so when you said this didn't happen at Guantanamo Bay, you're not right.

Colonel Beaver: What—what I said was approved by the commander and what was authorized by the commander did not—did not happen. And—

Senator GRAHAM. Well, who did this?

Colonel Beaver: I don't—

Senator GRAHAM. Did somebody make—

Colonel Beaver: I don't know. I didn't do—

Senator GRAHAM. —it up on their own?

Colonel Beaver: I don't know, sir. I didn't do the—

Senator GRAHAM. Well, the report found that it was part of an interrogation plan.

Colonel Beaver: The interrogation plan that was written did not authorize the use of dogs in that manner.

Senator GRAHAM. Okay. The—this report also found that a detainee—the same detainee was strip-searched in front of female personnel. Is that correct?

Colonel Beaver: I heard that that happened, yes, sir.

Senator GRAHAM. Okay. Do you know who authorized that?

Colonel Beaver: I do not know.

Senator GRAHAM. So, based on this independent investigation, we know, at least on one occasion, dogs were used as part of an interrogation technique at Guantanamo Bay, and a person was stripped naked, a man stripped naked in front of female personnel at Guantanamo Bay. Is that correct?

Colonel Beaver: Sir, if you—I've heard that that's what the Schmidt-Furlow investigation found.

Senator GRAHAM. Okay.

Colonel Beaver: I've not seen it for myself. I'm just saying I take your word for it that that's what was found in the investigation.

Senator GRAHAM. Mr. Mora, wrap this up. It's my understanding that when you saw the interrogation techniques being proposed, you felt a need to speak up, and you did. You felt a need to continue to speak up, and you did. Is that correct?

Mr. Mora: That's right, sir.

Senator GRAHAM. And you had a lot of military lawyers speaking up to you that this is not right, what they're proposing, this creates problems. That's correct?

Mr. Mora: That's also correct, Senator.

Senator GRAHAM. And I think we had 35 techniques at one time, and some of your criticism was listened to and the techniques were ratcheted down, in terms of number. Is that correct?

Mr. Mora: I'm not sure about how it ended up, Senator. But, if you're referring to the working-group report—

Senator GRAHAM. Yeah. This is important for later on. We had a list of techniques that Rumsfeld signed off on. Then you had pushback, and you were part of the pushback. Then they re-evaluated these techniques, and, Admiral Dalton, a new group came out. That's where the Joint Chiefs and others said, "We need to look at this thing again," and they did.

Admiral Dalton: Yes, Senator.

Senator GRAHAM. And, as I understand it, you were never involved in any final approval of the new techniques. You were sort of shut out. Is that true?

Mr. Mora: That's correct. We were all engaged in the working—so-called working-group process, and it was—the working group was generating a draft that was to be issued on behalf of all the services. To my knowledge, I thought that the draft was never finalized, although I learned later, after Abu Ghraib, that, in fact, the draft was finalized. So, I—yes, I was not part of the final approval that led to the final working-group report.

Senator GRAHAM. Colonel Beaver, do you ever recall General Miller going from Guantanamo Bay to Iraq as the invitation of General Sanchez?

Colonel Beaver: Yes, sir. After I left GTMO, he asked me to travel with him to Iraq at end of August, beginning of September 2003.

Senator GRAHAM. Now, as I understand his testimony, he went there to—sent—General Sanchez said, "We need to get better intelligence. We need to know more about these IEDs. Come over here and help us." Is that the nature of the visit?

Colonel Beaver: Yes. They had a number of problems, from the use of their classified network systems to just basic interrogation, and also the—General Karpinski was having difficulties just in detaining Iraqis, separate from interrogation, so some military police experts were brought along.

Senator GRAHAM. Was there any information provided by General Miller or yourself to people in Iraq that Arabs are afraid of dogs, and one way to get information is to use dogs or to humiliate them by taking their clothes off in front of women?

Colonel Beaver: I don't recall being in a conversation that that was discussed at all.

Senator GRAHAM. What did you tell the people in Iraq to do?

Colonel Beaver: I had conversations with a number of the lawyers—Colonel Warren on down—about a number of—if you want to say, a number of different issues, not just—I mean, not just interrogation, but even detention. I was appalled at how detainees were being held at a core holding area that Karpinski was in charge of, and the conditions were so severe and so disgusting that it was hard to believe that Americans were detaining people in that manner. And General Miller was so disgusted, he called up General Sanchez to get this corrected as soon as possible.

Senator GRAHAM. But, do you—thank you—do you think it's an accident that the techniques that we're talking about in Guantanamo Bay, on at least one occasion - - and that's the use of dogs in interrogation and the stripping down of a detainee in front of female personnel—wound up migrating to Iraq?

Colonel Beaver: I can say I was certainly surprised when I saw Captain Wood in Iraq, who had been the MI commander at Bagram when the two detainees were beaten to death. And I was shocked to see her there, quite frankly. So, I know there were people that went from Afghanistan to Iraq. And she showed me an SOP that she had written that contained techniques and that she said the lawyers had approved. And so, I went up the legal chain of Mark Warren's to see who had approved these, because I knew, in a Geneva setting, it was potentially a problem, and I brought that to the attention of Colonel Warren.

Senator GRAHAM. Thank you.

Chairman LEVIN. Mr. Mora, you've heard that the—what happened at Guantanamo did not constitute abuse of detainees. Do you agree with that?

Mr. Mora: Sir, I think abuse occurred, and potentially even torture of some detainees.

Chairman LEVIN. And in terms of the—what was authorized by the Secretary, do you believe that that constituted abuse? In other words, what he has said was okay, those category-2 and some of the category-3 techniques that he approved on December 2nd, in your judgment were those abuses permissible under Geneva or under other law?

Mr. Mora: Senator, it depends upon how those techniques would be applied.

Chairman LEVIN. Just—how about nakedness, nudity? Would that be permitted?

Mr. Mora: I think it would not be permitted, General —

Chairman LEVIN. How about use of dogs to induce stress?

Mr. Mora: It would not be permitted under Geneva.

Chairman LEVIN. All right.

Now, Admiral Dalton, I think you—you said that the —I believe that you said that part of the reason that you understood to—that was the reason why you were told to stop your legal review was because Mr. Haynes did not want the services' critical comments disseminated. Is that correct?

Admiral Dalton: Senator, I don't recall if those were my exact words. I believe that—

Chairman LEVIN. Was that one of the reasons?

Admiral Dalton: I believe that—I understood that Mr. Haynes did not want broadbased discussions of this topic and of these

issues, and dissemination of various memos and memoranda and that sort of thing.

Chairman LEVIN. All right. Now, did you see the memorandum from the various services objecting to these techniques? Did you read those memoranda?

Admiral Dalton: Yes, Senator.

Chairman LEVIN. Those memoranda came before the decision of the Secretary of Defense on December 2nd, is that correct?

Admiral Dalton: That's correct.

Chairman LEVIN. Is—I think it's very important—and this is really what is one of the things that is new here this morning—is that the protests, the objections of the military, the JAG officers in the services, came both before and after the December 2nd, 2002, memorandum. Is that correct? In other words, when that task force was appointed, later on there were some objections. We—Mr. Mora was involved in those. But, prior to December 2nd, prior to the Secretary of Defense signing that category-2 and some category-3 techniques were going to be authorized, the military JAG officers and the military lawyers objected strongly to the recommendation that came from GTMO. Is that correct?

Admiral Dalton: Senator, the memos were not all written by JAG officers, they came from the staff planners, generally with input from some of the JAG officers—

Chairman LEVIN. Fine. It came from the services.

Admiral Dalton: From the services—

Chairman LEVIN. Fine.

Admiral Dalton: —yes, Senator. And they—while they raised serious concerns about the use of, particularly, the category-3 techniques, they also identified the need for valuable intelligence and suggested—

Chairman LEVIN. Of course.

Admiral Dalton: —that there should be further legal and policy review.

Chairman LEVIN. Of course. And that legal and policy review, you were undertaking until you were stopped. Is that correct?

Admiral Dalton: Yes, sir.

Chairman LEVIN. So, that didn't occur, the way they recommended.

Admiral Dalton: The broadbased legal and policy review, such as the one that took place later, January to April of 2003, did not occur.

Chairman LEVIN. And that's what you were told you were supposed to do, until you were stopped.

Admiral Dalton: I was—Senator, I—that's what I took upon myself to do.

Chairman LEVIN. Well, weren't you asked to give a legal analysis by the Chairman of the Joint Chiefs?

Admiral Dalton: Senator, that was a part of my job. I didn't have to be asked; I did—I understood that there was a requirement for a legal and policy review, and I initiated such.

Chairman LEVIN. All right. Now, let's take a look at some of those objections from the Army.

Army interposes significant policy and practical concerns regarding most of category 2—not just category 3—category 2 and all of

category 3 techniques proposed. The International Operational Law Division of the Army, the chief, said that the stress positions, deprivation of light and auditory stimuli, and use of phobias to induce stress, quote, "crosses the line of humane treatment and will likely be considered maltreatment under the Uniform Code of Military Justice, and may violate the Torture Statute."

That trouble you when you read that? Were you troubled when you read that?

Admiral Dalton: Senator, I—yes, Senator, I recognized that there were concerns, absolutely.

Chairman LEVIN. I'm asking you whether you were troubled. Is the answer yes?

Admiral Dalton: I'm not sure—

Chairman LEVIN. Were you troubled that they—that there was a request to authorize the treatment of detainees, which, in the judgment of lawyers and the judgment of the military, said, their judgment, that—case of, now, the chief of the Army's International Operational Law Division —stress positions, deprivation of light, use of phobias to induce stress crosses the line of humane treatment, would likely be considered maltreatment under the Uniform Code—were you troubled that you were being requested—

Admiral Dalton: Senator—

Chairman LEVIN. —that the Secretary of Defense was being requested to approve something which, in the judgment of that chief of the Army's International Operational Division, would do that? Was that troubling to you? Did it cause you concern?

Admiral Dalton: Senator, those comments were made by the Army—in this case, the International Law Division—without a complete analysis being done. It was the initial response from the service that occurred—that came to the Joint Staff within 4—2 or 3 or 4 days after the initial tasker went to them.

Chairman LEVIN. Right.

Admiral Dalton: It certainly was of concern. My own office had concerns. I had concerns when we saw the request come in. However, I felt that we owed it to the combatant commander to do a full and complete review, and not to simply turn around and deny the request.

Chairman LEVIN. Of course.

Admiral Dalton: The initial responses from the services indicated that there were concerns, and that's what I took them for—

Chairman LEVIN. And you were—

Admiral Dalton: —as concerns.

Chairman LEVIN. —stopped right in the middle of that review, is that correct?

Admiral Dalton: I was stopped from conducting—from—

Chairman LEVIN. The review you were conducting—you were stopped in the middle of the review you were conducting.

Admiral Dalton: —of coordinating with the services and engaging other agencies to come in, that's—

Chairman LEVIN. That's the review you were conducting.

Admiral Dalton: Yes, sir.

Chairman LEVIN. And you were stopped in the middle. Or was it the beginning, or was it the—two-thirds through it? You were stopped during that review from finishing it, isn't that correct?

Admiral Dalton: Yes, sir.

Chairman LEVIN. Why is that so hard, to say yes, if you were?

Admiral Dalton: Because I want to be very clear that what I was stopped from doing was engaging in the—in a broad and open discussion with all of the services. That does not mean that I completely divorced myself from the process. I continued to work with Mr. Haynes and his—

Chairman LEVIN. We—

Admiral Dalton: —office. My staff continued to work with Mr. Haynes—

Chairman LEVIN. Right.

Admiral Dalton: —and his office.

Chairman LEVIN. You were stopped from doing what you thought was appropriate you should be doing. How's that?

Admiral Dalton: I was stopped from conducting the broadbased review that I had intended to conduct, Senator.

Chairman LEVIN. Which you thought was an appropriate review.

Admiral Dalton: Yes, sir.

Chairman LEVIN. Okay.

Now, in terms of the dog that was there—I don't know—I think it was you, Admiral, that was—that said it was—the purpose of the dog—what was the purpose of the request for the use of a dog? I think it was you, Admiral, who said it wasn't to scare, it was something else. Or was that you, Colonel Beaver?

Colonel Beaver: Well, from the perspective at GTMO, what—it was explained to me that the purpose of the dog —it could be used as perimeter security, which would be fine, and that if that unsettled the detainee, then it would work a dual purpose, because part of interrogation is to keep you unsettled, is to—when you play the mental chess game. So, when I asked about the dog, because I am a former military police officer before I was an attorney, I know that you don't take dogs into a detention cell or any other kind of cell or whatever. And I was assured that that would not happen. I found out, after I left Guantanamo, during the Schmidt-Furlow investigation, that it had happened on one occasion. I was unaware of that at the time.

Chairman LEVIN. Colonel, was the purpose of that dog to induce stress on the part of detainees?

Colonel Beaver: It was to—well, if the detainee was actually afraid of a dog—by patrolling the perimeter, if that kept the detainee off-balance or unsettled, then that was the purpose of it. I can't say with certainty that he was afraid of a dog.

Chairman LEVIN. Was the purpose of the dog being brought there to induce stress?

Colonel Beaver: I would say—

Chairman LEVIN. It's a very direct question.

Colonel Beaver: —my understanding—yes, I would say, from my understanding, yes.

Chairman LEVIN. How about the words of the request, "Using detainees' individual phobias, such as fear of dogs, to induce stress." That was the request—

Colonel Beaver: Sure.

Chairman LEVIN. —that you approved.

Colonel Beaver: Right.

Chairman LEVIN. So, it wasn't "if" the—

Colonel Beaver: Yes, sir.

Chairman LEVIN. —detainee did something, or if the perimeter walk did something. That was the purpose stated in the request that you approved.

Colonel Beaver: I'm not disagreeing, sir.

Chairman LEVIN. Sounded like you were.

Colonel Beaver: Oh. Sorry. I'm not disagreeing.

Chairman LEVIN. Last question this round.

Admiral Dalton, was it clear to you that Mr. Haynes was aware of the fact that the services had real problems with this request before he recommended to the Secretary of Defense that that be signed?

Admiral Dalton: Senator, it's my recollection that my staff briefed his staff on the issues that were brought to—in the memos from the services, and that he was aware of those concerns. Now, again, those concerns were addressed very early on in the process without the benefit of knowing what the safeguards would be, what the oversight would be, and so, I cannot say what the services' opinions would have been, had they had the same knowledge that Mr. Haynes and the rest of us had, after the process had gone through. So, I—

Chairman LEVIN. Now, that wasn't my question, was it, "what their opinions would have been if"? My question was, Was Mr. Haynes aware of the opinions of the services at that time? That's my question.

Admiral Dalton: Senator, I believe that he was aware that the services had concerns, yes, sir.

Chairman LEVIN. And was aware of those letters?

Admiral Dalton: I don't—

Chairman LEVIN. Did you brief his staff on those letters?

Admiral Dalton: My staff briefed his staff.

Chairman LEVIN. On those letters.

Admiral Dalton: Yes, sir.

Chairman LEVIN. Thank you.

Senator McCaskill?

Senator MCCASKILL. Before you wrote your legal opinion stating that all of these techniques—the techniques that we've referenced—all of 1, all of 2, and some of the 3—were legal under the Federal law, you attended a meeting that's been discussed here, where there was—a strategy meeting on counter-resistance, Lieutenant Colonel Beaver, and there were a number of people at that meeting, including the CIA lawyer and the chief interrogation—chief of interrogation control, Mr. Dave Becker. Do you remember that meeting?

Colonel Beaver: These meetings were mine. I started them in, I think it was late August, when it—I became aware that the military intelligence personnel wanted—were considering requesting additional techniques, so I thought it best if I held the meetings, brainstorming sessions, for lack of a better way to describe it, and invited everyone, including the law enforcement agencies, that there would be a more open discussion, as opposed to just the military intelligence people. And so, that was a regularly scheduled

meeting that Mr. Fredman, who just happened to come down to the island that day, was there for. So, it wasn't held for him, it was—

Senator McCASKILL. I see.

Colonel Beaver: —a meeting that I had—I scheduled those meetings and—

Senator McCASKILL. Okay.

Colonel Beaver: —invited everyone.

Senator McCASKILL. And so, the CIA lawyer was just invited in for that—

Colonel Beaver: Yes.

Senator McCASKILL. —meeting that was already planned.

Colonel Beaver: Yes.

Senator McCASKILL. Okay.

Colonel Beaver: Is how I recall it.

Senator McCASKILL. Okay. And I want to go through some of the notes about this meeting. And I know that you didn't write these notes. I just need to know whether you think that this recollection of what was said is flat wrong and just absolutely not true. It's important—

Colonel Beaver: Okay.

Senator McCASKILL. —to know whether you deny that these things were said in front of you or that you said these things.

The first thing is attributed to you, "We need to curb the harsher operations when the Red Cross is around. It's better not to expose them to any controversial techniques. We must have support of the DOD."

Colonel Beaver: I—Mr. Pryor, I think when you were absent, asked a similar question, and what I can say is, I do not recall, of course, 6 years later, anything that I actually said in that meeting. What I do—because I, as a liaison to the ICRC, and I have great respect for what they do—what I believe that I think I would have said is that when you are conducting an interrogation, if the ICRC is on the island and they want to see a particular detainee, you can't disrupt the interrogation for that purpose. And so, that automatically, if you want to say, can cause some controversy. And so, I—

Senator McCASKILL. Well, that's not what this says. This says—

Colonel Beaver: I—

Senator McCASKILL. —you need to curb—

Colonel Beaver: But, I didn't write it. All I can say is, ma'am—

Senator McCASKILL. Okay.

Colonel Beaver: —I don't know what actually happened or what was actually said. I'm just saying I don't think I would have said something in that manner, because I worked with the ICRC very closely, and we had an excellent relationship, and I have great respect for what they do. But, they came in 6-week cycles. They might be there for 6 weeks and then gone for 6 weeks. And so, I don't know, all I can guess is, I might have been referring to—when they're not there, you would be doing your more aggressive interrogation, because then there wouldn't be any problems, and then, when they come back, if they wanted to see that particular detainee, they were allowed to see the detainee. They had access to all the detainees.

Senator MCCASKILL. Well, why would there be a problem of them ever seeing the detainee?

Colonel Beaver: Well, when you're conducting an interrogation, you can't disrupt it for just the purpose of an ICRC visit.

Senator MCCASKILL. Whether it's harsh or not?

Colonel Beaver: Correct.

Senator MCCASKILL. Well, then why would you delineate "harsh" in your statement just now? Why would it make a difference whether it was harsh?

Colonel Beaver: Well, I—well, I'm just using it in context of this conversation. But, yes, we—there were many times when detainees were undergoing—like, they had just arrived on the island, and the ICRC was told they would not have access to them for 2 weeks while we processed them.

Senator MCCASKILL. All right—

Colonel Beaver: So, there were many engagements like that, where we explained why they could or could not see a detainee.

Senator MCCASKILL. The notes—I want to make sure the record's clear who wrote these notes. These notes were written by the Criminal Investigation Task Force—

Colonel Beaver: That's correct, ma'am.

Senator MCCASKILL. —of DOD.

Colonel Beaver: Yes. They're—

Senator MCCASKILL. Okay.

Colonel Beaver: —executive agent of the Secretary of the Army.

Senator MCCASKILL. Okay. So, these are criminal investigators that are used to contemporaneously taking notes and making sure that they're reliable, because they must rely on 'em in a criminal investigation.

Colonel Beaver: Again, I—all I'm saying is, I didn't write them, and, 6 years later, I cannot recall what I said in a meeting.

Senator MCCASKILL. Part of their professional training, in fact, is the ability to take notes contemporaneously with an event so they can recall, later, for purposes of the investigation, what happened. Is that correct?

Colonel Beaver: I don't dispute that.

Senator MCCASKILL. Okay. Now, let me ask you about something else that was said there.

Fredman, the CIA attorney, said, "The DOJ has provided much guidance on this issue. The CIA is not held to the same rules as the military. In the past, when the International Red Cross has made a big deal about certain detainees, the DOD has," quote, "moved them away from the attention of the International Red Cross." Upon questioning from the International Red Cross about their whereabouts, the DOD's response has repeatedly been that the detainees merited no status under the Geneva Convention. The CIA has employed aggressive techniques on less than a handful of suspects since 9/11."

Do you recall that—those words being said by the lawyer from the CIA, that there was a habit of moving these detainees if the International Red Cross started asking questions?

Colonel Beaver: Again, I would say, I don't recall, with any kind of specificity, what was said at that meeting. I know how we handled these issues. In fact, Qahtani, which the law enforcement folks

had custody of him at the brig before JTF-170 did, and the FBI and the CITF agents did not allow the ICRC to speak to him. He was seen through the—the ICRC was allowed, if they wished, to go in and see him in the brig, that he was alive and well. And that was in the July-August timeframe. So, this was one of the detainees, this particular gentleman, ISN-63, that had been of interest to the law enforcement community, as well as the intelligence community, and there had been many discussions. So, again, I can't attribute anything to what Mr. Fredman said about the CIA, but I knew that DOD had different rules regarding the ICRC and how we operated on a DOD installation.

Senator MCCASKILL. All right. Going further in the notes that were taken by law enforcement contemporaneous with this meeting, the chief interrogation control person, Mr. Becker, "Videotapes are subject to too much scrutiny in court. We don't want the LEA people"—law enforcement authority people—"in aggressive sessions anyway."

Lieutenant Colonel Beaver, law enforcement authority choose not to participate in these type of—choice not to participate in these type of interrogations is more ethical and moral, as opposed to legal.

And then, this line from Mr. Fredman, "The videotaping of even totally legal techniques will look ugly."

Now, that phrase is particularly troubling to me, because inherent is that phrase that videotaping even the totally legal ones would look bad; for God's sakes, let's don't tape the ones that are illegal.

Colonel Beaver: For people who have never participated in a police interrogation, I would just say that it would make anyone uncomfortable. And so, without a context, without understanding the situation, I'm—again, all I'm—I'm not trying to be in Mr. Fredman's mind. I'm saying I understand, probably, what he is saying is, is that even when you have a legal police custodial interrogation, that people can be uncomfortable. I would just say, videotaping is not necessary unless it's—unless your military intelligence people need it, for whatever purpose, because we had closed-circuit TVs where the people could watch the interrogations 24/7, and so, it wasn't necessary to videotape it unless there was an intelligence purpose. So, my only point is that even when—yes, I mean, again, if you've never witnessed a police interrogation for hours and hours when you're interviewing a suspect, it can be very uncomfortable. It's not—

Senator MCCASKILL. Well, I will—

Colonel Beaver: —pleasant.

Senator MCCASKILL. —tell you, Lieutenant Colonel Beaver, I have witnessed—

Colonel Beaver: Well, I'm not saying you personally.

Colonel Friend: I must object to this line of questioning, ma'am, with all due respect, Senator.

Chairman LEVIN. Excuse me. Excuse me.

Colonel Friend: Mr. Chairman—

Chairman LEVIN. Excuse me.

Colonel Friend: Yes, sir.

Chairman LEVIN. Can you, first of all, identify yourself?

Colonel Friend: Yes, Mr. Chairman. I'm Lieutenant Colonel James Friend. I'm the defense counsel for Lieutenant Colonel (Retired) Beaver.

My objection, sir, if I may.

Chairman LEVIN. Yeah, I'll tell you what, if you're—can you consult with your client, there, and then either you or her speak into the microphone—one or the other? You want to speak into the microphone.

Colonel Friend: I would like to object to my client being asked about what someone else said, and the inference is it's attributed to her. I think that's an unfair—

Chairman LEVIN. All right. Let me just—your objection is noted. Okay. Senator?

Senator MCCASKILL. Yeah, I was asking you, Lieutenant Colonel Beaver, if these things were said in front of you; in your capacity as the staff judge advocate, if this—if you recall—these were notes taken by Criminal Investigative Task Force within DOD, contemporaneous with this meeting, attributing some statements to you and some statements to Mr. Fredman. I was asking, Do you recall those statements being made. I was not saying—and I think I was very clear—that Mr. Fredman said this, not Lieutenant Colonel Beaver. Do you recall those statements being made in front of you in your capacity as the judge advocate—staff judge advocate at Guantanamo Bay?

Colonel Beaver: Ma'am, the meeting was for non-attribution purposes, so that people could speak their minds and that opinions not be held against someone in an adverse way. It was a brainstorming session. People spoke up and had different opinions. I don't recall what was said 6 years ago. But, the purpose of the session was to allow people to speak freely and address their concerns, whether it be the law enforcement community, the intel community, you know, the lawyers, the military police, and so that we would get a genuine discussion of the issues. And so, if you put—constrict—you know, you restrict what can be said, then you're going to have people doing things, perhaps, in darkness, and you won't know about it. So, I wanted people to have a good collegial discussion. And, as I recall, we had a good collegial discussion. But, I cannot recall precisely what was said by a particular person or whether, you know, law enforcement—and the law enforcement people were particularly hostile towards me, and were very unhappy with me that I was even having these conversations. But, I still thought it was best to do it in the light of day and include everyone than to just limit it to military intelligence personnel. But, I'm sorry, I really—I cannot recall with any certainty what was said 6 years ago.

Senator MCCASKILL. Well, I think it's important that the law enforcement personnel were included in these meetings, and I'm sure they have witnessed, as I have, many, many, many interrogations. And I'm sure that's why they thought it was important to take notes.

And let me close my questioning by reading into the record, Mr. Chairman, what one of those law enforcement task force—the deputy commander of the Criminal Investigation Task Force said in an e-mail within a month of this meeting, in looking at the notes from

the meeting. "This looks like the kind of stuff congressional hearings are made. Quotes from Lieutenant Colonel Beaver regarding things that are not being reported give the appearance of impropriety. Other comments, like," quote, "It's basically subject to perception. If the detainee dies, you're doing it wrong," end of quote, and, quote, "Any of the techniques that lie in the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents," end of quote, "seem to stretch beyond the bounds of legal propriety. Talk of," quote, "wet-towel treatment," end of quote, "which results in the lymphatic reacting as if you are suffocating, would, in my opinion, shock the conscience of any legal body looking at using the results of the interrogations or possibly even in the interrogators. Someone needs to be considering how history will look back at this."

Colonel Beaver: Mr. Chairman, I just—please, one comment—I invited the Criminal Investigative Task Force, law enforcement, if they had concerns, to put 'em in writing and put them through to General Miller so that they could be considered. They did not. I also said that if they had any concerns about violations of the law, that was never—not a single FBI agent or CITF Task Force person ever, ever, except on one occasion, where they said Dave Becker put tape on a detainee's mouth, ever came to me and said, "There's a violation of the law." They had policy arguments and ethical arguments, but they never came to me and said, "Right now there is something going on. I think it's a violation of the law." This has all been years later, through e-mails and hearsay. And so, if they felt that way at the time, they could have given me the same courtesy that I gave them.

Senator MCCASKILL. I couldn't agree with you more.

Colonel Beaver: It did not happen. They went to Mr. Mora. That's fine. I didn't know about that. But, at the time, I would have looked at anything seriously, and they knew that.

Senator MCCASKILL. I couldn't agree with you more. And that's why I called Mr. Mora a hero.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

The—what tab is this? If you could look at tab 11, Colonel Beaver, I think you'll—

Colonel Beaver: Yes, sir.

Chairman LEVIN. —find there a letter from the Criminal Investigation Task Force giving an assessment of the JTF-170 counter-resistance strategies.

Colonel Beaver: Uh-huh. It was never shared with me, Chairman.

Chairman LEVIN. But, they shared it in writing. You —

Colonel Beaver: Not with—

Chairman LEVIN. You didn't mean to imply that they never put in writing their objections, did you?

Colonel Beaver: In terms of meetings I had and discussions I had, they did not provide me anything in writing with specific interrogation techniques of that nature. I understood that they were discussing it with the Army Office of the General Counsel, and also, I didn't know Mr. Mora, but I knew higher headquarters, and

I was told by an attorney at the Office of the Army General Counsel that their objections were policy-based, and not legal-based.

But, I never—

Chairman LEVIN. Well, let me read you this from that, if you could take—

Colonel Beaver: Yes.

Chairman LEVIN. —a look at that exhibit.

Colonel Beaver: Sure.

Chairman LEVIN. “CITF personnel who are aware of the use or abuse of certain techniques may be exposed to liability under the UCMJ.” Sounds legal to me. This is what they provided to the Secretary of Defense. This is what they provided to Admiral Dalton. Admiral Dalton says she saw this. I mean, this is—this is the—

Colonel Beaver: I never saw it.

Chairman LEVIN. Well, I—you’re not—

Colonel Beaver: [Inaudible]—

Chairman LEVIN. I know you didn’t see it. I’m not asking you if—

Colonel Beaver: Right.

Chairman LEVIN. —you saw it. I’m saying that you didn’t mean to imply, in your testimony, that they never set out their objections to what you were recommending, in writing. It’s just that you say you never saw them. Is—

Colonel Beaver: We—

Chairman LEVIN. —that correct?

Colonel Beaver: We lived and worked together there, and I’m just saying they didn’t afford me the same opportunity that I afforded them, which I—I gave them—

Chairman LEVIN. I’m not—I’m just asking you a very direct question. You’re not suggesting that they didn’t put their strong—

Colonel Beaver: I don’t—sorry, sir.

Chairman LEVIN. I’m asking—

Colonel Beaver: No, I’m sorry.

Chairman LEVIN. You didn’t mean to suggest that, did you?

Colonel Beaver: Um—

Chairman LEVIN. You just didn’t—weren’t aware of it.

Colonel Beaver: Until today, this is the first time I’ve seen this memo.

Chairman LEVIN. That’s fine.

Colonel Beaver: Thank you.

Chairman LEVIN. It’s just that you were not brought into the—into that loop. You had already sent your opinion on. The Joint Chiefs had asked for an opinion in Washington, “What do they think about your opinion?” They then asked the services, What did they think? This is a response from one of the services as to what—

Colonel Beaver: Okay.

Chairman LEVIN. —they thought of your opinion.

Colonel Beaver: And this after—

Chairman LEVIN. Whether they should—

Colonel Beaver: —the discussions.

Chairman LEVIN. It’s after what?

Colonel Beaver: This—no, sorry. I’m sorry, sir.

Chairman LEVIN. It’s after what?

Colonel Beaver: I thought you were done. No, this is after discussions that we had on the island.

Chairman LEVIN. It's dated November 4th—

Colonel Beaver: Sure.

Chairman LEVIN. —2002, which is a month, to the day—

Colonel Beaver: Right.

Chairman LEVIN. —prior to the Secretary of Defense signing his memo. Is that correct?

Colonel Beaver: Uh-huh.

Chairman LEVIN. All right.

Now, Colonel Beaver, after the Secretary of Defense approved the techniques, on December 2nd, did you work with the senior staff at GTMO to develop the standard operating procedure at tab 16? If you could take a look at tab 16.

Colonel Beaver: No, I did not, sir. That was done by the—some of the folks at the interrogation cell. But, I had nothing to do with that.

Chairman LEVIN. Were you familiar with this document?

Colonel Beaver: I recall seeing it when the staff showed it to me. I might have recalled seeing it at the time at GTMO, but I know that some of the personnel at GTMO, the intelligence side, in preparation, should the Secretary approve something, they were preparing an SOP so that they wouldn't, sort of, be behind the timeline. But, that was not at the direction of General Miller or certainly myself.

Chairman LEVIN. Did you have communications with them about standard operating procedures to implement the Secretary's December 2nd, 2002, decision?

Colonel Beaver: Right, I—I certainly told them that anything that they did, they needed to have a—it's per military doctrine, a standard operating procedure, so that it was clear to everybody concerned what the right and left limits were, and, you know, what the chain of command was, who to report things to. And so, yes, I'm aware of that.

Chairman LEVIN. All right. The—you never saw any of the drafts, though.

Colonel Beaver: I can't say with certainty I saw this draft or not at the time. I've certainly see it since.

Chairman LEVIN. Okay.

Colonel Beaver: I know who Ted Moss is, but I—

Chairman LEVIN. Is it possible you saw this draft at the time?

Colonel Beaver: I could have, sir.

Chairman LEVIN. All right. And is—if you could read, on page 80—I think it's page -2—

Colonel Beaver: Okay.

Chairman LEVIN. —where it says, “The basis for this document is the standard operating”—it's about halfway down. Do you see that? “The basis for this document is the standard operating procedure used at the U.S. Navy SERE School in Brunswick, Maine, as defined by reference (a).” Do you see that reference?

Colonel Beaver: On page 2?

Chairman LEVIN. The heading of the page is “JTF”—well, that's the first page.

Colonel Beaver: Oh, oh, I'm sorry.

Chairman LEVIN. No, I said page 2, so I misled you.

Colonel Beaver: Right, I see—I see where you're referring to.

Chairman LEVIN. See where it says "JTF GTMO SERE"—

Colonel Beaver: Right.

Chairman LEVIN. "SERE standard"—

Colonel Beaver: Right.

Chairman LEVIN. —"operating procedure"?

Colonel Beaver: I don't recall.

Chairman LEVIN. And then you see "JTF GTMO SERE interrogation"—

Colonel Beaver: Yes.

Chairman LEVIN. —"standard operating procedure"? And then you see "Guidelines for employing SERE," crossed out—

Colonel Beaver: Right.

Chairman LEVIN. —"management techniques during detainee interrogations." It's that page I'm asking you to—

Colonel Beaver: Right.

Chairman LEVIN. —to look at. And then, if you would look at the "purpose," would you follow me? "This standard operating procedure document promulgates procedures to be followed by JTF GTMO personnel engaged in interrogation operations on detained persons."

Colonel Beaver: Right.

Chairman LEVIN. "The premise behind this is that the interrogation tactics used at U.S. military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to break SERE detainees. The same tactics and techniques can be used to break real detainees during interrogation operations. The basis for this document is the standard operating procedure used at the U.S. Navy SERE—Survival, Evasion, Resistance, and Escape—School in Brunswick, Maine, and is defined by referenced (a)." Did you follow all that?

Colonel Beaver: Uh-huh, yes, sir.

Chairman LEVIN. Is it possible you saw this when you were at Guantanamo?

Colonel Beaver: I can't say. I know it certainly never left the intelligence sector, or—what were they called then? I think they were—it was the ICE.

Chairman LEVIN. Did you—

Colonel Beaver: It's nothing that came to the attention of General Miller for approval. It was a beginning draft, as I recall, that Ted Moss took, on his own initiative, to start drafting. But, I don't think it ever received any serious consideration. But, that's my just—

Chairman LEVIN. Did you—

Colonel Beaver: —my basic recollection.

Chairman LEVIN. Did you participate in drafting at all?

Colonel Beaver: No, sir, not this.

Chairman LEVIN. But, did you participate in any of the standard operating procedure drafts to implement that order of the Secretary of Defense?

Colonel Beaver: I gave them a—as part of the SOP, the legal brief, or the legal piece of it, the—I don't know what to call it. But, they had a list of things that were in there from my legal briefing—

Chairman LEVIN. All right.

Colonel Beaver: —in their SOP.

Chairman LEVIN. All right. And you gave your approval of that.

Colonel Beaver: Well, it's not this SOP.

Chairman LEVIN. In other SOPs, did you give—

Colonel Beaver: It was—

Chairman LEVIN. —your—

Colonel Beaver: —a different SOP, as I recall, that actually listed the actual procedures that were approved, and the—all of the nuts and bolts that go into preparing an interrogation plan, who has to approve it, at what level, and—

Chairman LEVIN. Right.

Colonel Beaver: —and, you know, all the way up to General Miller. And so, that's the SOP, I think, that I recall.

Chairman LEVIN. And were the SERE techniques in that particular document that you saw?

Colonel Beaver: No.

Chairman LEVIN. Were they based on the SERE—

Colonel Beaver: It was—

Chairman LEVIN. —techniques?

Colonel Beaver: —based on the SECDEF's memo.

Chairman LEVIN. Which incorporated category-2—certain—

Colonel Beaver: But—

Chairman LEVIN. —category-3—is that right?

Colonel Beaver: It wasn't—

Chairman LEVIN. Were they specified in the SOP?

Colonel Beaver: Right, but it wasn't specified as SERE; it was specified as, "This is what's authorized." The SECDEF's—

Chairman LEVIN. All right.

Colonel Beaver: —memo. And then, here's who has to approve what, as I—

Chairman LEVIN. Gotcha.

Colonel Beaver: —recall.

Chairman LEVIN. Finally, just—for Admiral Dalton, there—have you ever, before this event, been told to stop analyzing a request or issue that came up for your review?

Admiral Dalton: Senator, there was a previous occasion where I was directed that I could not attend interagency meetings and participate in an interagency discussion of the issues. But, again, like this time, I was—

Chairman LEVIN. Let me just ask my question again. Had you ever before been told to stop analyzing a request that came up for your review?

Admiral Dalton: Senator, no.

Chairman LEVIN. And do you know whether the Joint Staff has ever been asked to stop analyzing a request that came up for their review?

Admiral Dalton: I don't know, sir.

Chairman LEVIN. You don't know that—or, you don't know whether—

Admiral Dalton: I don't know whether that has occurred.

Chairman LEVIN. All right.

Now—do you have any more questions of this panel? All right. There's a vote on. The panel is excused. Thank you, all.

No, I want to ask you, Mr. Mora—I'm sorry. There is two questions I must ask you.

First of all, you heard my description, in my opening statement, of your activities, which came in January, I believe, after the Secretary of Defense entered his order, and your efforts to get that rescinded were recounted in my opening statement.

Mr. Mora: Yes, Senator, I heard that.

Chairman LEVIN. And was that accurate?

Mr. Mora: That's accurate.

Chairman LEVIN. Thank you.

Now, on December—when the Secretary approved, on December 2nd, the recommendation of—to—for aggressive interrogation techniques for GTMO, he was handed a handwritten note which said, "Why is standing limited to 4 hours? I stand for 8 to 10 hours a day." What impact might that note have on military personnel who read it?

Mr. Mora: Senator, when I first saw that note, I was shocked that any such note would appear on this kind of document, and I was reacting as a litigator to seeing a client's comment of this nature on a document. I felt, at the time, that, even though it may have been intended jocularly, and Secretary Rumsfeld has that style, in this kind of document such a handwritten notation might be interpreted as a wink and a nod to go beyond the limits of the document.

Chairman LEVIN. You said, in your opening statement, that, "Allied nations have hesitated to participate in combat operations, given the possibility that individuals captured during the operation could be abused by U.S. or other forces." Now, if our allies aren't willing to support combat operations, that would put more U.S. forces in harm's way. Would that be true?

Mr. Mora: That's correct.

Chairman LEVIN. And is that something where you have specific examples, or was that your fear?

Mr. Mora: Senator, I have one specific example that was relayed to me, but I would prefer to discuss that in a closed session rather than an open hearing.

Chairman LEVIN. And you had an opinion of the so-called "Yoo memo," which had been commissioned by Mr. Haynes. How would you say that—you had meetings with Mr. Yoo, I believe, about that memo. How would you describe his defense as of his memo? Was it—

Mr. Mora: I only had one meeting with Mr. Yoo, Senator, and I—I thought the memo was a travesty of the applicable law, and a very dangerous memo, because it led the DOD into what we see here and what the working group ultimately would issue.

Chairman LEVIN. And you were not told about the working group's final product, you were kind of left out, according to my opening statement, which you said was accurate. How did the Yoo memo, if you know, influence that final working-group report?

Mr. Mora: The Yoo memo essentially created the contours and content for the working-group report. So, it was dispositive of all the legal issues that were addressed within the Yoo memo.

Chairman LEVIN. Senator Graham?

Senator GRAHAM. Looking forward, Mr. Mora, I think we now understand why we needed to bring some certainty to this whole area, because, like you say, this—it's very hard to interpret this, these policies and procedures. They do migrate, they do get people confused. People get overzealous sometimes, they don't know what the boundaries are. Do you think it's a good thing that we passed the Detainee Treatment Act, the McCain language, outlawing cruel, inhumane, and degrading treatment? That was necessary, given the history of all this?

Mr. Mora: Absolutely necessary, Senator.

Senator GRAHAM. Okay, thank you.

Chairman LEVIN. Thank you all very much. You're all excused.

And we will be back after this vote. Let's say—is it 20 to 3:00 now? Twenty of? We'll begin at 3 o'clock. The next panel will be at 3 o'clock.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]