

# Exhibit I

110TH CONGRESS }  
*2nd Session* }

COMMITTEE PRINT {

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

---

R E P O R T

OF THE  
COMMITTEE ON ARMED SERVICES  
UNITED STATES SENATE

NOVEMBER 20, 2008

UNCLASSIFIED

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

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

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

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

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

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

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

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

UNCLASSIFIED

## UNCLASSIFIED

**Senate Armed Services Committee Conclusions**

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

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

**Conclusions on SERE Training Techniques and Interrogations**

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

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

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

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

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

UNCLASSIFIED

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

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

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

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

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

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

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

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

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

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

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

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