



Seton Hall University School of Law
Center for Policy & Research

GUANTANAMO: AMERICA'S BATTLE LAB

Professor Mark P. Denbeaux

Director, Seton Hall Law Center for Policy & Research

Professor Jonathan Hafetz

Deputy Director, Seton Hall Law Center for Policy & Research

Joshua Denbeaux '91, Counsel to two Guantánamo detainees

with

Erin Hendrix '13, Chelsea Perdue '15, Kelly Ross '13, Lauren Winchester '12

Co-Authors & Research Fellows

Sara Ben-David '12, Sean Camoni '11, Meghan Chrisner-Keefe '11, Edward Dabek '13, Bahadir Ekiz '13, Ryan Gallagher '14, Sean Kennedy '13, Adam Kirchner '15, Chrystal Loyer '12, Eric Miller '13, Jordan Emma Mintz '13, Kelli Stout '11, Nicholas Stratton '13, Kelly Ann Taddonio '13, Paul Taylor '11, Philip Taylor '12, Joshua Wirtshafter '14

Senior Research Fellows, Seton Hall Law School Center for Policy and Research

Contributors

Melissa Caparruva '15, Alison Frimmel '15, Joseph Fuirita '15, Gregory James '15, Alexandra Kutner '15, Ashleigh Lewis '15, Kaitlin Lapi '15, Ghalib Mahmoud '15, Tiffany Russo '15, Russell Victorio '15, Hayden Watkins '15, Christopher Whitten '15, Haoying Zhu '15

Research Fellows, Seton Hall Law Center for Policy and Research

Joseph Hickman

Adjunct Professor and Senior Research Fellow, Seton Hall Law Center for Policy and Research

Seton Hall Law Center for Policy and Research

“I got my marching orders from the President of the United States.”

Major General Michael Dunlavey, Commander of JTF-170 (Intelligence Command) at Guantanamo Bay Detention Center.

“The SECDEF said he wanted a product and he wanted intelligence now. He told me what he wanted; not how to do it . . .”

Major General Michael Dunlavey, Commander of JTF-170 at the Guantanamo Bay Detention Center.

*“History is being made with the Interrogations Operations taking place at Guantanamo Bay Operationally, it breaks new ground. The Command, [redacted], Analysts, Service and Support elements, and Military Police are daily being asked **not just to do the jobs they were trained for, but to radically create new methods and methodologies that are needed to complete this mission in defense of our nation.**”*

JTF-GTMO Joint Intelligence Group Standard Operating Procedures

Seton Hall Law Center for Policy and Research

*The Executive Order now made JTF-170 “responsible for the **worldwide management of interrogation** of suspected terrorists detained in support of us (sic) military operations . . .” and noted this was “a significant expansion of the current mandate.”*

Email Regarding Executive Order Defining JTF-170’s Role

*“MG Dunlavey and later MG [Geoffrey] Miller referred to GTMO as a ‘**Battle Lab**’ meaning that interrogations and other procedures that were to some degree experimental and their lessons would benefit DoD in other places.”*

Colonel Britt Mallow, the Commander of the Army’s Criminal Investigative Task Force.

*I can understand why a lot of people were scraped up from the battlefield and brought to Gitmo, because we didn't know what we had, but we didn't have any real mechanisms to sort them out. And I think once we started sorting them out, we'd already stated publicly that we had ‘the worst of the worst.’ And it was a little hard to go against that and say, well, **maybe some of them aren't quite the worst of the worst, and some of them are just the slowest guys off the battlefield.***

Thomas Berg, Staff Judge Advocate for JTF-160

ABSTRACT:

The stated intended purpose of the Guantanamo Bay Detention Center (GTMO) was to house the most dangerous detainees captured in the course of the Global War on Terrorism. Founded in 2002, the commander in charge of detention operations, Brigadier General (BG) Rick Baccus, effectively operated the camp as a facility for housing prisoners of war. As POWs, the detainees were entitled to basic human rights afforded under the Geneva Conventions. Pursuant to typical military command structure, BG Baccus answered to the United States' Southern Command (SOUTHCOM). Little did he know, however, the Executive Branch had created a second, secret chain of command, forging direct access between intelligence officials to the President of the United States. The intelligence commander and head of this second chain of command, Major General (MG) Michael E. Dunlavey, received his marching orders directly from President George W. Bush. These orders commanded MG Dunlavey to debrief Secretary of Defense Rumsfeld once a week, in person, on matters of intelligence, which avoided placing any record of their discussions in written form. MG Dunlavey's predecessor, MG Miller, also reported daily to the Secretary of Defense once per week by telephone. This arrangement operated beyond the scope of the established military chain of command.

What was it that the Executive Branch was so eager to gain from intelligence at GTMO? Results. The continued pressure effectively created GTMO's alter-ego. Out of it emerged America's "Battle Lab," as MG Dunlavey and MG Miller both referred to GTMO. Every lab must have its test subjects and GTMO was no different; its rats were human beings, detainees. Instead of receiving POW treatment, the detainees underwent a level of interrogation overwhelmingly condemned by federal government agencies at the time, and criticized by all by the agencies involved in intelligence gathering. When the FBI expressed concern over the legality of some interrogation techniques, the agents were told by intelligence officials at GTMO to act like the "guests" that they were. Soon, all personnel not connected with intelligence gathering became guests at the base, unwelcome in many areas of the camp. BG Baccus was muscled out of the facility when his complaints regarding detainee treatment began to interfere with the intelligence mission. Soon after this, all operations were consolidated into a Joint Task Force under the direct supervision of intelligence commander, MG Miller.

The criticized torture tactics, known as Enhanced Interrogation Techniques, were not utilized for the purpose of obtaining reliable information. Instead, the "results" the Executive Branch was searching for was something more sinister. The government sought information on the most effective ways to torture a human physically, information on the most damaging ways to break a man psychologically, and insight as to just how far the human body could be pushed in pain and terror before organ failure or death. Upon arrival, detainees were routinely given psychosis-inducing drugs and were held in isolation for up to 30 days without access to human contact, including the International Committee of the Red Cross. Once in GTMO, non-compliant detainees could also be subject to isolation techniques, which triggered denial of access to both doctors and Red Cross representatives.

When detainees underwent torture, medics monitored their vital signs to ensure that there was no organ failure or death. The policy implemented at the camp was that if the detainee's pulse dropped below 40 beats per minute, the interrogation had to stop until his pulse was raised to 41 beats per minute. Medics would also draw blood to determine how close each detainee was to kidney failure from the interrogations. In addition, the Department of Defense encouraged the use of psychological interrogation tactics in addition to physical abuse. Intelligence also toyed with detainees' health through the use of Mefloquine, an anti-malarial medication, at doses known to induce anxiety, paranoia and other mental harm. The FBI reported numerous interrogation techniques exploiting psychological weaknesses and preying on the detainees' Muslim faith. These interrogation methods would be seemingly stopped by Secretary of Defense Rumsfeld in early 2003, only to be renamed and repackaged by the Working Group and made available by the Secretary of Defense shortly thereafter in the spring of 2003.

GTMO existed as a place where "Intel" could push nearly all of the boundaries of torture without fear of liability. It placed the intelligence mission at the forefront, demoting any interests of the detention mission. In doing so, the laboratory was formed, paving the way for a multitude of psychological experiments against detainees who were admittedly not "the worst of the worst," but were in fact merely "low-level enemy combatants." GTMO operated as a Battle Lab, a world where experimentation on the defenseless served to generate data with which to counsel and train interrogators at military facilities across the globe. These bases utilized the insight granted by intelligence officers from GTMO, most notably Bagram and Abu Ghraib. With GTMO serving as the command center for worldwide interrogation coordination, the laboratory could utilize the results of the torture testing in training future interrogators in different theaters of war. After multiple Senate investigations and the declassification of many documents, the world can now see that GTMO was no simple POW detention center, but has instead operated as America's Battle Laboratory.

Common Acronyms

1LT: First Lieutenant

BG: Brigadier General

BSCT: Behavioral Science Consultation Team

CENTCOM: Central Command

CIA: Central Intelligence Agency

CITF: Criminal Investigative Task Force

CJTF: Combined Joint Task Force

COL: Colonel

CPT: Captain

DIA: Defense Intelligence Agency

DoD: Department of Defense

EIT: Enhanced Interrogation Technique

FBI: Federal Bureau of Investigation

GTMO: Guantanamo Bay Detention Facility

ICE: Interrogation Control Element

ICRC: International Committee of the Red Cross

JDOG: Joint Detention Operations Group

JIG: Joint Intelligence Group

JIIF: Joint Interagency Interrogation Facility

JMG: Joint Medical Group

JPRA: Joint Personnel Recovery Agency

JTF-GTMO: Joint Task Force Guantanamo Bay

Seton Hall Law Center for Policy and Research

LTC: Lieutenant Colonel

MG: Major General

OGC: Office of the General Counsel

OLC: Office of Legal Counsel

PSYOPs: Psychological Operations

SAP: Special Access Program

SECDEF: Secretary of Defense

SERE Training: Survive, Evade, Resist, Escape Training

SMU: Special Missions Unit

SOPs: Standard Operating Procedures

SOUTHCOM: Southern Command

UCMJ: Uniform Code of Military Justice

INTRODUCTION

The Guantanamo Bay Detention Center (GTMO) opened in January of 2002 to hold what the Bush Administration labeled the “worst of the worst” detainees in the Global War on Terror.¹ This designation signified that these detainees would be afforded no constitutional rights, including the right to an attorney or administrative hearing. A question kept echoing across America: Why physically bring the “worst of the worst” even closer to American citizens? Why move detainees from secure American facilities in the Middle East, away from investigators and forces that would most need this information? The answer is simple. These detainees were not the monsters the federal government painted them to be. These detainees were not immediate, dangerous threats to American lives. In fact, then-Secretary of Defense (SECDEF) Donald Rumsfeld advised the Joint Chiefs of Staff that these men were all low-level detainees.² They were, however, labelled as extreme threats to national security to cloak the true purpose behind the base: serving as America’s Battlelab, including coordination of world-wide interrogation and torture training and research. The base was transformed from a mere detention facility into the center of top secret intelligence coordination pursuant to an order from the Chair of the Joint Chiefs of Staff, still unclassified.³

Intelligence officials solidified their power when President Bush created a secret, primary chain of command. A classified order from President Bush to Major General (MG) Dunlavey, first intelligence officer of the base, gave the general “direct marching orders.”⁴ These orders included provision that this leader in intelligence at the base meet with SECDEF Rumsfeld once per week to discuss intelligence operations.⁵ This secret directive was never known to the general in charge of detention operations, Brigadier General (BG) Rick Baccus, who believed the military police were still in charge of the camp. BG Baccus continued to report to Southern Command (SOUTHCOM) while a separate chain of command was instated without his knowledge from MG Dunlavey to the SECDEF.

The Center for Policy and Research has discovered the disturbing truth behind the purpose of GTMO. Instead of being used primarily as a detention facility, GTMO was designed and operated by Intel predominately as America’s Battle Lab—a facility where U.S. intelligence

¹ Cheney Remarks at Gerald Ford Journalism Awards (06/01/2009), *available at* <http://press.org/news-multimedia/videos/cspan/286727-1> (Former Vice President Cheney calls detainees the “worst of the worst” at 41:17-41:19); Katharine Q. Sleyle, “Threats and Responses: The Detainees,” *NYTIMES* (Oct. 23, 2002), *available at* <http://www.nytimes.com/2002/10/23/world/threats-responses-detainees-some-guantanamo-prisoners-will-be-freed-rumsfeld.html>. The article attributes the description of the detainees as the “worst of the worst” to Secretary of Defense Donald Rumsfeld. *Id.*

² Memorandum from Donald Rumsfeld for Chairman, Joint Chiefs of Staff and Commander, U.S. CENTCOM (Apr. 21, 2003) (declassified in part July 9, 2010).

³ App. H; *See infra* Part I.B.

⁴ Schmidt-Furlow Deferred, Additional Enclosures to Schmidt-Furlow report that were not provided in the previous release to the ACLU, at 3738 (“Summarized Witness Statement of MG (retired) Mike Dunlavey, Mar. 17, 2005.”). *available at* [http://www.aclu.org/torturefoia/legaldocuments/july_docs/\(M\)%20SCHMIDT-FURLOW%20DEFERRED.pdf](http://www.aclu.org/torturefoia/legaldocuments/july_docs/(M)%20SCHMIDT-FURLOW%20DEFERRED.pdf) (last accessed Mar. 2, 2013) [hereinafter *Schmidt-Furlow Deferred*].

⁵ *Id.*

personnel could coordinate worldwide interrogation efforts and have unfettered control over persons in U.S. custody.⁶ Conclusions drawn from collected materials include:

- According to a classified Executive Order, JTF-170 was “responsible for the worldwide management of interrogation of suspected terrorists detained in support of us (sic) military operations . . .” highlighting the emphasis of interrogation and Intel over detention.
- MG Dunlavey, Commander of JTF-170, the intelligence mission, received his marching orders from the President of the United States.
- Intel advocated creation of “an environment of controlled chaos.”
- Standard Operation Procedures for the camp indicate that Intel micromanaged every detail of life at GTMO.
- Untold numbers of Intel groups operated in GTMO, including DIA, JIG, civilian contractors, special operations, psychological operations (PSYOPs), those trained in Survive, Evade, Resist, Escape (SERE) tactics, a Behavioral Science Consultation Team (BSCT) and special access programs (SAPs).
- Intel reverse-engineered SERE training for use against detainees. SERE training is based on a study of techniques used to gain false information and is used on US soldiers to help them resist enemy interrogation.
- Intel implemented Enhanced Interrogation Techniques (EITs) such as 20 hour interrogations, hooding, food deprivation, and strict isolation prior to receiving approval for such techniques.
- Intel ignored concerns regarding EITs raised by all branches of the military as well as the Federal Bureau of Investigation (FBI) and continued their use with official approval from the SECDEF Donald Rumsfeld.
- Intel simply stopped referring to these techniques as EITs and instead renamed them “Counter-Resistance Techniques” to continue their use.
- Intel used mefloquine, an anti-malarial drug, at doses five times greater than necessary for the stated prophylactic use, at the risk of severe psychological side effects.
- Intel tested many of the EITs in its interrogations of detainee Mohammed al-Qahtani, including isolation, sleep deprivation, removal of clothing, forced grooming, and mild, non-injurious physical contact.

America’s most notorious detention facility was covertly transformed into a secret interrogation base designed to foster intelligence’s curiosity on the effects of torture and the limits of the human spirit. Although the government continues to mislead the public by touting that GTMO houses the “worst of the worst,” the facts revealed by the Center unveil a different, more disturbing story.

⁶ For the purposes of this report, “intelligence” refers to any intelligence gathering and interrogation operations supported by the military at GTMO. Despite numerous references to intelligence within the 2004 GTMO SOP’s, the government has never provided a comprehensive definition of the term. However, it is clear that this refers to HUMINT, or Human Intelligence in the case of GTMO. HUMINT is essentially any information that can be collected and provided by human sources/interpersonal contact. See Joint and National Intelligence Support to Military Operations, Joint Publication 2-01, G-5, October 7, 2004, available at http://www.fas.org/irp/doddir/dod/jp2_01.pdf [hereinafter *Joint and National Intelligence Support to Military Operations*] (on file with author).

This report relies solely upon government documents and statements by government officials and personnel, and it operates under the assumption that all statements contained within government documents have a presumption of truth. Unlike previous reports released by this Center, however, there was no discrete universe of documents examined in order to produce this report. In this case, it was necessary to find and review documents in Senate Reports, Standard Operating Procedures (SOPs), emails between military service members and civilians, public statements by officials, and other government documents composed for a variety of different military operations in GTMO. No classified documents were used in the preparation of this report, nor have any been included herein.

Part I of the report examines the steady shift in GTMO's focus and, therefore, purpose. This shift effectively transformed the base from a detention facility into a secret intelligence operation. Part II discusses the continued development of the Battle Lab at GTMO under the care of intelligence, focusing on psychological experimentation. Additionally, Part III paints a picture of the Battle Lab in action, with a case study on Mohammed al-Qahtani, detainee 063. In conclusion, Part IV discusses the evidence amassed that GTMO truly served as the think tank and center for experimentation in exploring interrogation techniques and training other military officials in facilities across the globe. In this sense, America's Battle Lab served as the heart of worldwide interrogation testing and training.

I. THE PRESIDENT'S MARCHING ORDERS

"I got my marching orders from the President of the United States."

Major General Michael Dunlavey, Commander of JTF-170 (Intelligence Command) at the Guantanamo Bay Detention Center.

At the inception of the Global War on Terror, the Bush administration informed the world that the United States naval base at Guantanamo Bay would become a detention facility where "the worst of the worst" will be held and brought to justice.⁷ Most Americans were not surprised to learn that detainees would be subject to interrogation (though later discoveries of the extent and nature of techniques used caused great controversy). Many Americans, however, will be surprised to learn just how dominant and pervasive the role of the intelligence gathering function has been at the facility. Although a joint command of the detention and intelligence functions was originally put in place at GTMO, government-released documents show that Intel had the run of the camp from the beginning at every level. At the lowest level, Intel controlled what items detainees could have within their cells and how good behavior could be rewarded. At the highest level, Intel reorganized the command of the camp in order to prioritize and promote the intelligence gathering mission. This section of the Report details the structure of command operations at GTMO and highlights Intel's role at every operational level.

A. The Stated Purpose

Despite the fact that the federal government painted GTMO as a detention facility, the intelligence gathering mission was furtively at the forefront of operations. GTMO opened its doors to detainees in January of 2002, just months after the September 11th attacks and President

⁷ Sleeyle, *supra* note 1; Cheney Remarks at Gerald Ford Journalism Awards, *supra* note 1.

Bush's declaration of a Global War on Terror. Since the creation of the detention facility, GTMO has been publicized as a detainment facility for prisoners deemed to be the "worst of the worst."⁸ According to President Bush, in a speech given on September 6, 2006, the detainees held at GTMO were not "common criminals, or bystanders accidentally swept up on the battlefield" but instead were "suspected bomb makers, terrorist trainers, recruiters and facilitators, and potential suicide bombers."⁹ The President continued, stating these detainees were "in our custody so they cannot murder our people."¹⁰ Further, the President assured the public that "we have in place a rigorous process to ensure those held at Guantanamo Bay belong at Guantanamo."¹¹

President Bush's speech suggests that there are three concurrent missions at GTMO: first, to hold those people that would pose a threat to the U.S. if released, second, to bring those people that have committed acts against the U.S. to justice, and third, to gather intelligence.¹² President Bush explained that the fourteen detainees in a secret Central Intelligence Agency (CIA) custody program were transferred to GTMO so they "can face justice" and that the CIA program would continue to be used for questioning newly captured suspected terrorists.¹³

B. The Hidden Purpose

Although GTMO's detention and justice missions were more prominently promoted, intelligence gathering was secretly at the forefront of operations.¹⁴ Former SECDEF Rumsfeld wanted "transfers of detainees to Guantánamo Bay to be kept to a minimum—to only individuals of high interest for interrogation who posed a threat to our nation's security."¹⁵ However, in 2003, SECDEF Rumsfeld complained that "[w]e need to stop populating Guantanamo Bay with

⁸ Sleeyle, *supra* note 1.

⁹ Address on the Creation of Military Commissions to Try Suspected Terrorists (Sept. 6, 2006), in *SELECTED SPEECHES OF PRESIDENT GEORGE W. BUSH 2001–2008*, at 411, available at http://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf. [hereinafter *Speeches of President G.W. Bush*].

¹⁰ *Id.* at 411–12 ("They are in our custody so they cannot murder our people. One detainee held at Guantanamo told a questioner questioning him[] said this: 'I'll never forget your face. I will kill you, your brothers, your mother, and sisters.'").

¹¹ *Id.*

¹² See generally *id.*

¹³ See *Speeches of President G.W. Bush, supra* note 9.

We will continue to bring the world's most dangerous terrorists to justice—and we will continue working to collect the vital intelligence we need to protect our country. The current transfers mean that there are now no terrorists in the CIA program. But as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical—and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information. *Id.* at 420. The speech also details that the important intelligence gathering has been done through the CIA custody program and in prisons in Afghanistan and Iraq. *Id.* at 411–12. The examples given of important intelligence gathered are from the CIA program, and persons held in that program were transferred to GTMO only after the information was extracted. *Id.* at 412–18.

¹⁴ *CaseMap Facts Report: John T. Furlow Interview 1*, at OIG-INTV 000-558, available at http://www.aclu.org/files/pdfs/natsec/dojfb20100514/40_johntfurlow_interview1_4pp.pdf ("General John T. Furlow explained that JTF-GITMO is under SOUTHCOM. The main purpose of JTF-GITMO is to obtain intelligence.") (emphasis added) [hereinafter *Furlow Interview*] (on file with author).

¹⁵ Donald Rumsfeld, *KNOWN AND UNKNOWN* 568 (2011).

low-level enemy combatants.”¹⁶ The prioritizing of GTMO’s intelligence mission is demonstrated in a sworn statement given on March 17, 2005, by MG Dunlavey, who served as the inaugural commander of JTF-170.¹⁷

[T]he SECDEF told me that DoD had accumulated a number of bad guys. He wanted to set up interrogation operations and to identify the senior Taliban and senior operatives and to obtain information on what they were going to do regarding their operations and structure. *The SECDEF said he wanted a product and he wanted intelligence now. He told me what he wanted; not how to do it . . .* . The mission was to get intelligence to prevent another 9/11.¹⁸

According to Colonel (COL) Britt Mallow, the Commander of the Army’s Criminal Investigative Task Force (CITF), “MG Dunlavey and later MG [Geoffrey] Miller referred to GTMO as a ‘Battle Lab’ meaning that interrogations and other procedures that were to some degree experimental and their lessons would benefit DoD in other places.”¹⁹

When GTMO opened to detainees in 2002, JTF-160 was in charge of the entire camp.²⁰ A shift in power occurred in February of 2002, shortly after the detainees from Afghanistan arrived, when the Chair of the Joint Chiefs of Staff and the Commander-in-Chief of the U.S. SOUTHCOM (CINCSOUTH) issued an Executive Order creating JTF-170 and making it responsible for the interrogation operations in GTMO. Although this Executive Order has never been declassified or published, the content of the order was revealed in an email on February 19, 2002, from Linda Watt, Foreign Policy Advisor for U.S. SOUTHCOM at the DoD, to Gregory Suchan, Acting Assistant Secretary of the Bureau of Political-Military Affairs at the U.S. State Department.²¹ Watt’s purpose in sending this email to the State Department was to alert it to the Executive Order’s potential consequences for international relations.²² According to the Executive Order, JTF-170 was “responsible for the worldwide management of interrogation of

¹⁶ *Memorandum from Donald Rumsfeld for Chairman, Joint Chiefs of Staff and Commander, U.S. Central Command*, *supra* note 2.

¹⁷ *Schmidt-Furlow Deferred*, *supra* note 4.

¹⁸ *Id.*

¹⁹ App. H.

²⁰ JTF-160 was established in the mid-1990s at GTMO to support processing centers for Cuban and Haitian migrants. *S. Comm. on Armed Services, 110th Cong., Rep. on Inquiry into the Treatment of Detainees in U.S. Custody*, 12 n.83 (Comm. Print 2008), available at http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf [hereinafter Senate Report].

²¹ App. H; *See* 67 Federal Register 141, July 23, 2003, at 48243. Suchan then forwarded Watt’s email to a number of high ranking individuals in the State Department, including: Martin Cheshes, former Ambassador to Djibouti, State Department; Brent Blaschke, Foreign Service Officer and former Chargé d’Affaires ad interim to Seychelles, State Department; Lincoln P. Bloomfield, then-Assistant Secretary of State for Political-Military Affairs, State Department; Randolph Marshall Bell, then-Director for Austria, Germany and Switzerland Affairs, State Department; Debra Cagen, then-Director of the Bureau of European and Eurasian Affairs, State Department, who later headed the development of an international coalition for Operation Iraqi Freedom; James J. Carragher, then-Coordinator for Cuban Affairs, State Department; Greg Sprow, who currently works as a Merida Reports Officer for the Office of Mexican Affairs, State Department; James Larocco, then-Principal Deputy Assistant Secretary of State for the Near East, State Department; Gordon Gray, then-Deputy Chief of Mission at the U.S. Embassy in Egypt; Peter Schmeelk, State Department; and John D. Finney, Director of the Department of State Foreign Policy Advisors, State Department. *Id.*

²² *Id.*

suspected terrorists detained in support of us (sic) military operations” and noted that this was “a significant expansion of the current mandate.”²³ From the email as well as Watt’s remarks, it is clear that the focus of the Executive Order was on worldwide management of interrogation.²⁴ This demonstrates that although GTMO officially was a detention facility, it had secretly become the center for interrogation operations occurring worldwide. From its formation, JTF-GTMO has served as a Joint Interrogations Operations facility for the United States.²⁵ Joint Interrogations Operations “extend beyond the exploitation efforts conducted in theater and fulfill strategic intelligence requirements.”²⁶ In other words, operations at GTMO were intended to extend beyond the bounds of the detention facility. Joint Interrogations Operations are generally run in an interagency environment.²⁷ It is this coordinated and inter-agency atmosphere that lays the foundation for the base’s ability to operate as a worldwide interrogations headquarters.

1. *The Battle Between the Overt and the Covert Missions*

In 2002, BG Baccus was in charge of the detention mission, JTF-160, and MG Dunlavey was in charge of the intelligence mission, JTF-170. BG Baccus’ plan for a traditional prisoner of war camp was quickly undermined, however, by MG Dunlavey’s no-holds-barred intelligence gathering mission. The conflicting goals of leadership of intelligence and detention operations quickly resulted in intelligence taking control and abandoning BG Baccus’ strict compliance with the Geneva Conventions.

As JTF-170 assumed responsibility for interrogation operations under the command of MG Dunlavey, JTF-160 remained responsible for detention.²⁸ BG Baccus’ philosophy was to treat the detainees in accordance with the Geneva Conventions.²⁹ Specifically, he required that “[a]ll the service members under my command must recognize the fact that they need to treat the detainees humanely,” understanding that “[a]ny time anyone lays down their arms, our culture has been to treat them as non-combatant.”³⁰

BG Baccus’ approach, however, was at odds with the intelligence gathering goals of JTF-170. JTF-170 objected to affording the detainees POW-style treatment, resisting affording basic constitutional and human rights, including the provision of Korans in their respective native language, appropriate meals for Ramadan, and literature on prisoners’ rights.³¹ Intel refused these services, because they believed that controlled chaos would make interrogations more

²³ *Id.*

²⁴ In her email, Watt refers to Suchan as being in Washington and herself as being “down here.” This can be read to mean Florida or GTMO. *Id.*

²⁵ *Joint and National Intelligence Support to Military Operations*, *supra* note 6, at G-5.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See Senate Report*, *supra* note 20, at 12. On March 28, 2002, command of JTF-160 passed from the original commander, General Michael Lehnert, to BG Baccus. Rudi Williams, *GITMO General Rates Force Protection High With Detainee Care*, AMERICAN FORCES PRESS SERVICE, available at <http://www.defense.gov/News/NewsArticle.aspx?ID=43729>.

²⁹ Suzanne Goldenberg, *Former Guantanamo Chief Clashed with Army Interrogators*, THE GUARDIAN (May 19, 2004), available at <http://www.guardian.co.uk/world/2004/may/19/iraq.guantanamo>.

³⁰ Williams, *supra* note 28.

³¹ Goldenberg, *supra* note 29.

effective.³² BG Baccus has frankly stated that he interfered with attempts to manipulate detainees' environments.³³ In an interview on August 27, 2005, BG Baccus was asked whether the "stories of the intensity" of arguments between MG Dunlavey and higher ups about the amount of information being gained from detainees and the subsequent desire for "environmental stimulus changes" ever affected BG Baccus directly.³⁴ BG Baccus answered,

Other than [the fact that] they [sic] were proposals [for environmental stimulus changes], none of it was ever put into effect as far as I was concerned. *And if we found anything that we thought was amiss, why, we fixed it immediately.* I remember going on one tour of the camp where I found some of the isolation cells had been covered over. There were Plexiglas inserts—you may have seen them—Plexiglas inserts that allowed light in. Some of them had been covered over, and when I went into the cellblock, I said, "Who ordered this?" "We don't know. We found it like that." "OK, remove them." So we did. It was constant. You had to go around and constantly police the situation to make sure that nothing was out of hand. But there was nothing that I was aware of that ever got to any extent in terms of sensory deprivation or that kind of thing that I was aware of.³⁵

According to Lieutenant Colonel (LTC) Thomas Berg, then Staff Judge Advocate for the detention task force and MG Baccus, detention and Intel had very different goals.³⁶ While detention existed to protect the prisoners and preserve any evidence for future trials, Intel was only there to efficiently exploit intelligence:

[W]e told our guards that they were not to cooperate directly with the intel people. In other words, if you see something, you report it, but you don't go looking for it, and you don't do things for the interrogators, because you're working to secure the safety and well-being of these prisoners in the event they're ever brought to trial.³⁷

It was LTC Berg's belief that Intel wanted to operate without the oversight of the detention command.³⁸ LTC Berg also noted that he had many heated arguments with both the JAG Corps officers serving with MG Dunlavey regarding the rule of law in GTMO and the applicability of the Geneva Conventions.³⁹

BG Baccus and his team's philosophies did not mesh well with MG Dunlavey's order to satisfy SECDEF Rumsfeld, who "wanted a product and . . . wanted intelligence now."⁴⁰ MG

³² See Counter Resistance Strategy Meeting Minutes, Oct. 2, 2002 at App. G. [hereinafter *CRSM Minutes*].

³³ Interview Rick Baccus, FRONTLINE, Aug. 27, 2005, (transcript published Oct. 18, 2005), available at <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/baccus.html> [hereinafter *Baccus Interview*].

³⁴ *Id.*

³⁵ *Id.* (emphasis added).

³⁶ Interview Thomas Berg, Frontline, July 18, 2005 (transcript published Oct. 18, 2005), available at <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/berg.html> (last accessed Mar. 2, 2013) [hereinafter *Berg Interview*].

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Schmidt-Furlow Deferred*, *supra* note 4.

Dunlavey's opinion of BG Baccus' operation had particular force on account of the high-ranking officials he reported to. In sworn testimony, MG Dunlavey stated:

Initially, I was told that I would answer to the SECDEF and USSOUTHCOM. I did not have to deal with USCENTCOM. Their mission had nothing to do with my mission. Everything had to go up to USSOUTHCOM then to JCS. The directions changed and *I got my marching orders from the President of the United States*. I was told by the SECDEF that he wanted me back in Washington DC every week to brief him.⁴¹

It is unclear from the wording whether SECDEF Rumsfeld was instructing MG Dunlavey to meet with him or with the President every week. Thus, the progress and status of GTMO and worldwide interrogation operations managed by JTF-170 were reported in person to either the SECDEF or the President himself each week, as ordered by the President. BG Baccus never knew that while he continued to report to SOUTHCOM, MG Dunlavey was bypassing SOUTHCOM completely. MG Miller, JTF-GTMO's commander from November of 2002 through April of 2004, later testified in a sworn statement that he was in daily contact with the Office of the SECDEF and sent reports to the Deputy SECDEF through SOUTHCOM.⁴² The JTF-GTMO Joint Intelligence Group (JIG) SOP also indicates that those it governed should "be aware that [their] activities and actions are often directed by or reported to the highest levels of the government."⁴³

2. *The Origins of Controlled Chaos: "If the Detainee Dies You're Doing it Wrong"*

In early 2002, MG Dunlavey began to strategizing and implementing a plan to maximize the effectiveness of GTMO's intelligence gathering efforts. In March of 2002, MG Dunlavey requested recommendations from COL Stuart Herrington, a retired Army intelligence officer, regarding how to effectively run the camp.⁴⁴ COL Herrington's report advised:

To effectively carry out its intelligence exploitation mission, [J]TF-170 and its interagency collaborators need to be in full control of the detainees' environment. Treatment, rewards, punishment, and anything else associated with a detainee should be centrally orchestrated by the debriefing team responsible for obtaining information from that detainee.⁴⁵

At a meeting entitled the Counter Resistance Strategy Meeting on October 2, 2002 in GTMO, the use of "controlled chaos" in the camp environment was a key topic.⁴⁶ Controlled chaos included taking steps to discover how to find and manipulate phobias, such as "insects,

⁴¹ *Schmidt-Furlow Deferred*, *supra* note 4, at 3738 ("Summarized Witness Statement of MG (retired) Mike Dunlavey, March 17, 2005").

⁴² *Id.* at 3774.

⁴³ *SOP for JTF GTMO JIG*, DoD 2 (Jan. 21, 2003) (revised July 26, 2004) [hereinafter *JIG SOP*].

⁴⁴ *See Senate Report*, *supra* note 20, at 12.

⁴⁵ *Id.* (citing COL Stuart Herrington, *Report of Visit and Recommendations*, at 1–2). COL Herrington's full report is not publicly available, but some portions are provided in the Senate Report.

⁴⁶ App. G.

snakes, [and] claustrophobia.”⁴⁷ Questions arose about the camp environment, and solutions were presented. BSCT⁴⁸ members Major Paul Burney and Major John Leso told the group, “[W]hat’s more effective than fear based strategies are camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees [The] [e]nvironment should foster dependence and compliance We need to create an environment of ‘controlled chaos.’”⁴⁹

Well aware of the implications of the phrase “controlled chaos,” those present at the meeting discussed the need to conceal their actions:

- LTC Beaver: “We may need to curb the harsher operations when ICRC [International Committee of the Red Cross] is around. It is better not to expose them to any controversial techniques.”⁵⁰
- Becker: “We have had many reports from Bagram about sleep deprivation being used.” LTC Beaver: “But officially not happening.”⁵¹
- Fredman: “In the past when the ICRC has made a big deal about certain detainees, the DOD has ‘moved’ them away from the attention of ICRC.”⁵²
- Fredman: “If someone dies while aggressive techniques are being used, regardless of cause death, the backlash of attention would be severely detrimental.”⁵³
- Fredman: “The threat of death is also subject to scrutiny, and should be handled on a case by case basis. Mock executions don’t work as well as friendly approaches.”⁵⁴
- LTC Beaver: “We will need documentation to protect us.”⁵⁵

Shortly after the BSCT advocated “controlled chaos,” BG Baccus was relieved of duty on October 9, 2002. According to BG Baccus, it did not take long for Intel to begin to make changes: “[W]ithin several days after I left, that’s when they floated the first memo about how they wanted to operate differently.”⁵⁶ Then in November of 2002, JTF-160 and -170 were merged into JTF-GTMO.⁵⁷ JTF-GTMO consisted of two entities: the JIG and the Joint Detention Operations Group (JDOG), both under the command of MG Miller.⁵⁸ According to MG Miller, his task “was to integrate them so they were in synchronization.”⁵⁹ When MG Miller

⁴⁷ App. G.

⁴⁸ For further discussion about the BSCT see *infra* Part II and App. D.

⁴⁹ App. G.

⁵⁰ *Id.*

⁵¹ *Id.* GTMO Interrogation Control Element (ICE) Chief David Becker is the speaker here.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ App. G.

⁵⁶ *Baccus Interview*, *supra* note 33.

⁵⁷ *Timeline*, JOINT TASK FORCE GUANTANAMO (2010),

<http://www.jtfgtmo.southcom.mil/index/sept%202010%20pdfs/PG2%20TIMELINE.pdf> (last accessed Mar. 2, 2013).

⁵⁸ *Joint and National Intelligence Support to Military Operations*, *supra* note 6, at G-5.

⁵⁹ *Schmidt-Furlow Deferred*, *supra* note 4, at 3773.

took command of JTF-GTMO, he had no experience with detainees or interrogations.⁶⁰ General Hill, CENTCOM, authorized him to speak directly with the Joint Staff and the Office of the SECDEF.⁶¹ MG Miller “talked to OSD [Office of the SECDEF] almost every day.”⁶² LTC Jerald Phifer was the Director of Intelligence under MG Dunlavey and remained under MG Miller.⁶³ LTC Phifer was replaced by COL Richard Sanders, who was then given the title of JIG Commander.⁶⁴

Although detention and intelligence-gathering work in concert on the ground in GTMO, Intel receives priority. According to the Joint and National Intelligence Support to Military Operations manual, “It is imperative that the detention mission [JDOG] is conducted in a manner that supports interrogation efforts [JIG] in the long-term exploitation facility.”⁶⁵

C. Who is Intel and What Do They Do: Macro and Micro-Management at GTMO

Intel commanders had extensive control over internal operations at GTMO, as seen through the SOPs and the sheer mass of personnel assigned. First, the GTMO JDOG Camp Delta SOPs provide insight into Intel’s control at GTMO.⁶⁶ The SOPs are the rules that govern camp-wide operations. They detail the functions and duties of all GTMO personnel around human intelligence collection and exploitation, effectively establishing a hierarchy in which Intel is prioritized over detention operations. SOPs that appear to involve detention operations—the movement of detainees or how detainee good behavior should be rewarded—have intelligence oversight built in. Thus, the SOPs confirm JDOG’s mandate to conduct the detention mission “in a manner that supports interrogation efforts.”⁶⁷ Examples of Intel’s micromanagement include potential dishonorable discharge for any military personnel who discussed anything he or she may have seen or heard unless specifically directed to do so by JIG, as well as control over any comfort items or rewards given to detainees.⁶⁸

Second, there are a number of groups operating at GTMO for intelligence purposes, demonstrating the level of control that Intel had over the base. These include: Defense Intelligence Agency (DIA), JIG, civilian contractors, Special Operations Command, a U.S. Army PSYOPs Detachment, and a BSCT.⁶⁹ They all played a significant role in interrogations at GTMO.⁷⁰ Finally, the existence of a Special Access Program (SAP) related to interrogations, which was likely unacknowledged with no congressional oversight, can be confirmed at GTMO.⁷¹ This SAP involved a PSYOPs soldier who specialized in SERE techniques.⁷² This

⁶⁰ *Senate Report*, *supra* note 20, at 73.

⁶¹ *Id.*

⁶² *Schmidt-Furlow Deferred*, *supra* note 4, at 3774.

⁶³ *Senate Report*, *supra* note 20, at 89.

⁶⁴ *Id.*

⁶⁵ *Joint and National Intelligence Support to Military Operations*, *supra* note 6, at G-5.

⁶⁶ *Camp Delta SOP*, JTF-GTMO (Mar. 1, 2004) [hereinafter *2004 GTMO SOPs*].

⁶⁷ *Joint and National Intelligence Support to Military Operations*, *supra* note 6, at G-5.

⁶⁸ See App. A. This appendix provides an in depth look at the GTMO SOPs as they relate to Intel. *Id.*

⁶⁹ See App. B, C, D.

⁷⁰ See App. C.

⁷¹ See App. B.

⁷² See App. B.

display of resources and manpower available at GTMO demonstrates the ability of the base to serve as American's Battle Lab in experimenting with interrogation techniques.

II. AMERICA'S BATTLE LABORATORY

*MG Dunlavey and later MG Miller referred to GTMO as a "Battle Lab" meaning that interrogations and other procedures there were to some degree experimental, and their lessons would benefit DOD in other places. While this was logical in terms of learning lessons, I personally objected to the implied philosophy that interrogators should experiment with untested methods, particularly those in which they were not trained.*⁷³

-- COL Britt Mallow, Commander of the Criminal Investigative Task Force

Control of the camp has allowed Intel to operate GTMO as a laboratory, conducting a massive experiment where Intel can test techniques and develop strategies for extracting HUMINT from detainees.⁷⁴ The first evidence of this mindset surfaced in March of 2002, when COL Herrington advised that intelligence needed to have greater control over detainees, even where this control interfered with the detention mission.⁷⁵ Intel then proceeded to, with their newfound ability to control the environment of the detainees, begin introducing drugs into interrogation procedures.⁷⁶ In addition, they began adopting decades-old battle and interrogation tactics which were designed for drastically different situations completely unrelated to intelligence gathering.⁷⁷ The JTF-GTMO JIG SOPs describe this innovation in interrogation tactics:

History is being made with the Interrogations Operations taking place at Guantanamo Bay [redacted]. Operationally, it breaks new ground. The Command [redacted] Analysts, Service and Support elements, and Military Police are daily being asked *not just to do the jobs they were trained for, but to radically create new methods and methodologies* that are needed to complete this mission in defense of our nation.⁷⁸

This demonstrates that Intel was intentionally encouraging untrained personnel to utilize untested methods of eliciting information from detainees without accountability.

⁷³ *Senate Report, supra* note 20, at 43 (quoting Responses of COL. Britt Mallow to questionnaire of Senator Carl Levin (Sept. 15, 2006)) (emphasis added). In addition to COL Mallow, two other witnesses also testified that the term "Battle Lab" was used by MG Dunlavey to describe GTMO operations. *Id.* at 43 n.308 (citing Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of Tim James (May 18, 2007)). MG Miller and MG Dunlavey deny having used the term. *Id.* at 43 n.311-12 (citing Committee staff interview of MG Michael Dunlavey (Nov. 30, 2007); Committee staff interview of MG Geoffrey Miller (Dec. 5, 2007)).

⁷⁴ *Joint and National Intelligence Support to Military Operations, supra* note 6, at G-5.

⁷⁵ "To effectively carry out its intelligence exploitation mission, [J]TF-170 and its interagency collaborators need to be in full control of the detainees' environment. Treatment, rewards, punishment, and anything else associated with a detainee should be centrally orchestrated by the debriefing team responsible for obtaining information from that detainee." *Id.* (citing COL Stuart Herrington, *Report of Visit and Recommendations*, at 1-2). COL Herrington's full report is not publicly available, but some portions are provided in the Senate Report.

⁷⁶ *See infra* Section III.A.

⁷⁷ *See infra* Section II.B.

⁷⁸ *JIG SOP, supra* note 43, at 2.

A. The Experimenters

1. Psychological Training and Executive Pressure

The DoD's use of psychological methods started before detainees even arrived in GTMO. The DoD knew there was information it wanted from detainees, but did not know how best to get it—or perhaps, the DoD was just impatient and unwilling to accept that it may not get the information it believed the detainee possessed. The DoD repurposed various units and techniques that had not previously been employed to these particular ends.

In December of 2001, the DoD General Counsel's office contacted the Joint Personnel Recovery Agency (JPRA), the government entity responsible for providing SERE training to soldiers at risk of capture, for “information about detainee ‘exploitation.’”⁷⁹ The JPRA had several explicit goals: “[R]eturn isolated personnel to friendly control, . . . deny the enemy a potential source of intelligence, . . . prevent the exploitation of captured personnel in propaganda programs designed to influence our national interest and military strategy, . . . [and] maintain morale and the national will.”⁸⁰

The DoD's request for information was unusual because the JPRA's expertise was in creating resistance to interrogation, rather than compliance.⁸¹ The JPRA's trainings were designed to teach soldiers how to avoid capture and resist interrogations behind enemy lines from countries that do not adhere to the Geneva Conventions.⁸² In February of 2002, the DIA sent a request to the JPRA for SERE instructors and psychologists to train interrogators at GTMO.⁸³ The JPRA team, according to Bruce Jessen, a senior SERE psychologist at the JPRA, “provided instruction to [redacted] personnel on the content of US Level ‘C’ Resistance to Interrogation training and how this knowledge can be used to exploit al Qaeda detainees.”⁸⁴ Notably, the JPRA provided the DIA with this training despite the fact that the mission of those trained in SERE tactics does not relate to intelligence gathering, but rather exploitation resistance.⁸⁵

Several months later, on July 25, 2002, DoD Deputy General Counsel for Intelligence, Richard Shiffrin, emailed JPRA Chief of Staff, Daniel Baumgartner, seeking a list of exploitation and interrogation techniques that had been effective against Americans.⁸⁶ Mr. Shiffrin confirmed that “a purpose of the request was to ‘reverse engineer’ the techniques.”⁸⁷ Not everyone was confident about the JPRA taking on this new role. In a memorandum, MG James Soligan, Chief

⁷⁹ See *Senate Report*, *supra* note 20, at 3.

⁸⁰ *About JPRA*, JOINT PERSONNEL RECOVERY AGENCY, http://www.jptra.mil/site_public/about/about.htm (last accessed Feb. 26, 2013).

⁸¹ *Senate Report*, *supra* note 20, at xiii. See *Strategic Goals*, JOINT PERSONNEL RECOVERY AGENCY, http://www.jptra.mil/site_public/about/goals.htm (last accessed Feb. 26, 2013).

⁸² *Id.* at 5.

⁸³ See *id.* at xiv, 8.

⁸⁴ *Id.* at 10.

⁸⁵ OFFICE OF THE INSPECTOR GEN. OF THE DEP'T OF DEF., REVIEW OF DoD-DIRECTED INVESTIGATIONS OF DETAINEE ABUSE 24 (Aug. 25, 2006) available at <http://www.fas.org/irp/agency/dod/abuse.pdf> [hereinafter *Review of DoD-Directed Investigations*].

⁸⁶ See *Senate Report*, *supra* note 20, at xiv, 24.

⁸⁷ *Id.* at xiv.

of Staff for the U.S. Joint Forces Command, stated that “[t]he use of resistance to interrogation knowledge for ‘offensive’ purposes lies outside the roles and responsibilities of JPRA.”⁸⁸ The JPRA expressed hesitancy, and “described operational risks associated with using ‘physical and/or psychological duress’ (a phrase that the JPRA used interchangeably with ‘torture’ throughout most of [the] attachment . . .) in interrogations.”⁸⁹

By mid-2002, it was clear that high-ranking officials were dissatisfied with the intelligence being produced in GTMO, and there was pressure on interrogation personnel to produce intelligence. GTMO Interrogation Control Element (ICE) Chief David Becker, testified that “JTF-170 Commander, MG Dunlavey, and his Director for Intelligence (J-2), LTC Phifer, had urged him to be more aggressive in interrogations.”⁹⁰ Becker also testified that “MG Dunlavey had advised him that the office of Deputy SECDEF Wolfowitz had called to express concerns about the insufficient intelligence production at GTMO” and that on one occasion, the Deputy Secretary said “GTMO should use more aggressive interrogation techniques.”⁹¹ This pressure to produce results combined with the training requests to SERE instructors at the JPRA serve as further evidence that the DoD viewed GTMO as America’s Battle Lab, soon to be supplied with a psychological interrogation team, the Behavioral Science Consultation Team.

2. *The Rise of the Behavioral Science Consultation Team*

As a result of increased attention from the DoD, MG Dunlavey created a new group to serve as his experts on exploitation: the BSCT. In June of 2002, members of the Army’s 85th Medical Detachment Combat Stress Control team deployed to GTMO, two psychologists and one psychiatric technician.⁹² Upon arrival, at least two of the team members were unaware that they were assigned to the BSCT.⁹³ Team members “understood that their mission would be to care for U.S. soldiers dealing with deployment-related stress,” an appropriate assumption given the job description of military psychologists.⁹⁴ MG Dunlavey, however, pulled aside the three members and assigned them to the “newly created” BSCT,⁹⁵ whose mission would be to monitor the behavior of detainees both during interrogations and detention operations in the camps.⁹⁶

According to psychiatrist MAJ Burney, he and the two others were “hijacked and immediately [] processed into Joint Task Force 170, the military intelligence command on the island” and that “[n]obody really knew what we were supposed to do for the unit.”⁹⁷ Acknowledging the current demand for intelligence, MAJ Burney believed people were “frustrated,” that they were not “successful in establishing a link between al Qaeda and Iraq,”

⁸⁸ *Id.* at 231 (quoting Memo from MG James N. Soligan, to COL Randy Moulton, *Joint Personnel Recovery Agency Mission Guidance* (Sept. 29, 2004)).

⁸⁹ *Id.* at 28.

⁹⁰ *Id.* at 41 (quoting Committee Staff Interview of David Becker (Sept. 17, 2007)).

⁹¹ *Id.* at 41–42. MG Dunlavey testified that he could not recall ever having a phone call with Deputy Secretary Wolfowitz. *Id.* at 42 (citing Committee staff interview of MG Michael Dunlavey (Nov. 30, 2007)).

⁹² *Id.* at 38.

⁹³ *Id.* at 38–39.

⁹⁴ *Id.* See also *Careers & Jobs: Research Psychologist (71F)*, U.S. ARMY, <http://www.goarmy.com/careers-and-jobs/amedd-categories/medical-service-corps-jobs/research-psychologist.html> (last accessed Feb. 23, 2013).

⁹⁵ *Senate Report, supra* note 20, at 38.

⁹⁶ *Id.*; Memorandum from DoD for JIG, JTF-GTMO (Dec. 10, 2004) [hereinafter *BSCT SOP*] (on file with author).

⁹⁷ *Senate Report, supra* note 20, at 39.

and that this created “more and more pressure to resort to measures that might produce more immediate results.”⁹⁸ Indeed, “[o]thers involved in JTF-170 interrogations agreed that there was pressure on interrogation personnel to produce intelligence, but did not recall pressure to identify links between Iraq and al Qaeda.”⁹⁹ High expectations do not necessarily result in bad intelligence, but stressing a particular outcome may.

Without prior training in interrogations or SOPs for guidance, the three BSCT members soon realized they needed help with their newly minted mission.¹⁰⁰ The BSCT contacted LTC Morgan Banks, U.S. Army Special Operations Command Psychological Applications Directorate Chief and then-senior Army SERE Psychologist for assistance.¹⁰¹ LTC Banks, feeling “obliged to assist” the BSCT because they “lacked the proper training for the mission” contacted the JPRA for assistance in organizing training.¹⁰² As a result, on September 16, 2002, three members of the BSCT flew to Fort Bragg in North Carolina for the JPRA’s training.¹⁰³

The purpose of this training went beyond training the BSCT in standard interrogation methods; the BSCT was also tasked with finding out what new interrogation methods could be used. The BSCT members testified that they attended the training to “better understand the interrogation process.”¹⁰⁴ These members, however, also testified that “GTMO’s Director for Intelligence (J-2), LTC Jerald Phifer, approved their trip with the expectation that the BSCT would learn about and bring back interrogation techniques that could be considered for use in interrogations at GTMO.”¹⁰⁵ One member of the BSCT, MAJ Burney, said that he made LTC Banks “aware that there was interest within JTF-170 to see if we could use ‘SERE tactics’ to try to elicit information from detainees.”¹⁰⁶ GTMO’s Staff Judge Advocate, LTC Diane Beaver, further testified that “MG Dunlavey told staff he had been considering a request for authority to use additional interrogation techniques and that MG Dunlavey’s purpose in sending the staff to the training was to ‘find out what could be used.’”¹⁰⁷

The BSCT’s mission was later defined in the 2004 SOPs as providing “assistance in the development of psychological operations plans and consultation on the utilization of products developed by PSYOPs team” and to provide consultation with interrogation staff in support of the intelligence collection mission.¹⁰⁸

⁹⁸ *Id.* at 41 (quoting Army IG, Interview of MAJ Paul Burney at 6 (Apr. 28, 2006)).

⁹⁹ *Id.* (quoting Committee staff interview of LTC Jerald Phifer (June 27, 2007); Committee staff interview of [Redacted] (Sept. 12, 2007)).

¹⁰⁰ *Id.* The BSCT did not yet have SOPs—in fact, a draft of an SOP did not appear until November of 2002. *Id.* This draft SOP stated that the BSCT “does not conduct medical evaluation or treatment of detainees and does not participate in determining medical treatment protocols for detainees.” *Id.* This memo also stated that one of the BSCT’s essential tasks was to act as “a liaison between the JIG and the JTF GTMO assets.” *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 40.

¹⁰³ *Id.* at 43.

¹⁰⁴ *Id.* at 40.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (quoting Written statement of MAJ Paul Burney (Aug. 21, 2007) at 4).

¹⁰⁷ *Id.* at 40.

¹⁰⁸ *BSCT SOP*, *supra* note 96 at 6(a). This SOP established that a Psychological Operations (PSYOPs) unit was in place at GTMO. PSYOPs “are planned operations to convey selected information and indicators to foreign audiences to influence their emotions, motives, objective reasoning, and ultimately the behavior of foreign

Although the BSCT members were psychologists, they did not interact with their subjects. The BSCT SOPs clarified that the BSCT had no clinical role whatsoever.¹⁰⁹ The SOPs stated that the BSCT did not provide mental health evaluations or treatment to detainees or JTF-GTMO personnel.¹¹⁰ Instead, the JMG provided all medical treatment, including mental health evaluation and treatment for both detainees and JTF-GTMO personnel.¹¹¹ The BSCT members had knowledge of detainee medical conditions, however, because in order to “protect the welfare of the detainee,” the psychologists involved with the BSCT needed to “know if the detainee had a major medical condition.”¹¹² The BSCT was entitled to use that information to prevent any potentially harmful interrogation techniques.¹¹³

B. The Origins of Misguided Techniques

To address the ever-present concern of insufficient intelligence production, GTMO ICE Chief David Becker decided to experiment with SERE training for interrogators and invited SERE trainers to GTMO.¹¹⁴ On December 31, 2002, SERE instructors John F. Rankin and Christopher Ross arrived at GTMO, and over the next few days they provided instruction on “Biderman’s Principles” as well as the “theory and practical application of selected physical pressures” to ICE Personnel.¹¹⁵ Interestingly, incorporated into this training was a lecture on “Biderman’s Chart of Coercion,” excerpted from a 1957 article about North Korean strategies for eliciting false confessions.¹¹⁶

While Biderman’s findings were appropriately utilized by SERE instructors to train American Service Personnel on how to resist foreign captors during an interrogation, many found the use of such tactics as an offensive technique to be misguided. According to LTC Banks, then-senior Army SERE Psychologist, “[t]he training that SERE instructors receive is designed to simulate that of a foreign power I do not believe that training interrogators to

governments, organizations, groups, and individuals. The purpose of PSYOP is to induce or reinforce foreign attitudes and behaviors favorable to the originator’s objectives by conducting planned operations to convey selected information to foreign audiences to influence their emotions, motives, objective reasoning, and ultimately the behavior of foreign governments, organizations, groups, and individuals.” *Special Operations Forces Reference Manual*, U.S. SPECIAL OPERATIONS COMMAND 1-6 (2d ed. Aug. 2008) [hereinafter *SOF Reference Manual*]. PSYOPs personnel were commanded by the Special Operations Command. *About USSOCOM*, USSOCOM, <http://www.socom.mil/Pages/AboutUSSOCOM.aspx> (last accessed Feb. 26, 2013)). See App. C for further discussion of PSYOPs.

¹⁰⁹ *BSCT SOP*, *supra* note 96 at 7.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Email from COL Larry C. James to APA PENS Listserv (July 16, 2005, 8:11:12 PM PDT), http://s3.amazonaws.com/publica/assets/docs/pens_listserv.pdf (on file with author). The PENS Listserv was an American Psychological Association (APA) email chain, serving as a Presidential Task Force on Psychological Ethics and National Security, from Apr. 22, 2005–June 26, 2006 [hereinafter *James Email*].

¹¹³ *Id.*

¹¹⁴ *Id.* at 103.

¹¹⁵ Memo from John F. Rankin, SERE Training Specialist, and Christopher Ross, SERE Coordinator, to Officer in Charge, FASOTRAGRULANT Det. Brunswick, “After Action Report Joint Task Force Guantanamo Bay (JTF-GTMO) Training Evolution.” Jan. 15, 2003 [hereinafter *Rankin Memo*] (on file with author).

¹¹⁶ See *Senate Report*, *supra* note 20, at 103 n.803.

use what SERE instructors use would be particularly productive.”¹¹⁷ LTC Banks recommended physical pressures not be used at GTMO, stating:

Bottom line: The likelihood that the use of physical pressures will increase the delivery of accurate information from a detainee is very low. The likelihood that the use of physical pressures will increase the level of resistance in a detainee is very high

It is important to remember that SERE instructors use these techniques [i.e., physical pressures] because they are effective at increasing resistance Because of the danger involved, very few SERE instructors are allowed to actually use physical pressures [E]verything that is occurring [in SERE school] is very carefully monitored and paced Even with all these safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.

*My strong recommendation is that you do not use physical pressures [If GTMO does decide to use them,] you are taking a substantial risk, with very limited potential benefit.*¹¹⁸

The DoD Inspector General’s Report on Detainee Abuse also questioned the advisability of SERE training at GTMO stating, “JPRA’s expertise lies in training U.S. military personnel who are at risk for (sic) capture how to respond [to] and resist interrogations (a defensive mission), not in how to conduct interrogations (an offensive mission).”¹¹⁹

Even the JPRA personnel were not convinced that they belonged at GTMO. Joseph Witsch, JPRA instructor and training Team Chief, wrote, “I highly recommend we continue to remain in an advisory role and not get directly involved in the actual operations—GITMO in particular. We have no actual experience in real world prisoner handling Without actual experience with current [Designated Unlawful Combatants] we are making the assumption that procedures we use to exploit our personnel will be effective against the current detainees.”¹²⁰ Despite the criticism and risks, ICE put its experiment into practice and began to implement SERE techniques on detainees.

C. Techniques: “...simply made up by the BSCT.”

The BSCT released a memorandum (BSCT Memo) regarding suggested interrogation techniques.¹²¹ This document has never been released to the public.¹²² According to BSCT

¹¹⁷ *Id.* at 57 (quoting from Oct. 4, 2002 email from LTC Morgan Banks to MAJ Paul Burney). LTC Banks was familiar with the requests being made from GTMO personnel regarding EITs, as he had hosted the JPRA training at Fort Bragg in September of 2002 for GTMO interrogation personnel. *Id.* at 142.

¹¹⁸ *Id.* at 53 (emphasis added) (quoting Email from LTC Morgan Banks to MAJ Paul Burney and [Redacted] (Oct. 2, 2002)).

¹¹⁹ *Id.* at 5 (citing *Review of DoD-Directed Investigations*, *supra* note 85, at 24).

¹²⁰ *Id.* at 48 (citing Memo from Joseph Witsch to COL Moulton, Col Atkins, LTC Baumgartner, Mr. Wirts, U.S. Army Special Operations Command (USASOC), *Requirement to Provide Exploitation Instruction* (Sept. 24, 2002)).

¹²¹ *Senate Report*, *supra* note 20, at 51 n.367. The actual memorandum remains unreleased to the public. The Senate Armed Services Committee, however, was able to examine the memorandum while preparing the report. *Id.*

member MAJ Burney, an author of the BSCT Memo, some of the techniques were drawn from his SERE training though “other approaches were *simply made up* by the BSCT.”¹²³ These approaches would soon serve as the basis for the infamous EITs. The BSCT Memo contained three categories of techniques intended to “develop rapport, promote cooperation, and counter resistance.”¹²⁴ Category I techniques were the mildest and included incentives.¹²⁵ When they failed, interrogators could then request permission to implement Category II techniques.¹²⁶

Unlike Category I, Category II techniques were intended for “high priority” detainees: isolation for up to 30 days if authorized by the Chief Interrogator; food deprivation for up to 12 hours or as long as the interrogator goes without food; back-to-back 20 hour interrogations once a week; removal of comfort items, including religious items; forced grooming; handcuffs; and placing a hood over the detainee’s head during questioning or movement.¹²⁷

The final category created by the BSCT Memo was Category III, intended “ONLY for detainees that have evidenced advanced resistance and are suspected of having significant information pertinent to national security.”¹²⁸ Category III interrogation techniques were designed to break down a detainees psychological and physical stamina: daily use of 20 hour interrogations; strict isolation without medical visitation or access to the International Committee of the Red Cross (ICRC); food deprivation for up to 24 hours once a week; use of scenarios “designed to convince the detainee he might experience a painful or fatal outcome”; and use of non-injurious physical consequences such as removal of clothing and exposure to cold weather or water.¹²⁹

MAJ Burney stated that “by early October [2002] there was increasing pressure to get ‘tougher’ with detainee interrogations but nobody was quite willing to define what ‘tougher’ meant.”¹³⁰ MAJ Burney continued, stating there was “a lot of pressure to use more coercive techniques” and that it was clear that if he did not comply with this request, his interrogation policy memo to Deputy Director of Intelligence (J-2) LTC Phifer “wasn’t going to go very far.”¹³¹ MAJ Burney stated that he and his co-author, who remains unnamed, “were not comfortable with the memo they were asked to produce,” and they provided their concerns about the repercussions of the interrogation techniques outlined in the BSCT Memo.¹³²

The day that the BSCT Memo was released, a meeting was held in GTMO labelled the “Counter Resistance Strategy Meeting,” and attendees included LTC Phifer, LTC Beaver, MAJ

¹²² App. G.

¹²³ *Senate Report, supra* note 20, at 50 (emphasis added) (citing Committee staff interview of MAJ Paul Burney (Aug. 21, 2007)).

¹²⁴ App. G.

¹²⁵ *Id.*

¹²⁶ *Senate Report, supra* note 20, at 50.

¹²⁷ *Id.*

¹²⁸ *Id.* at 52.

¹²⁹ *Id.* at 52 (emphasis added).

¹³⁰ *Id.* at 50 (quoting Written statement of MAJ Paul Burney (Aug. 21, 2007)).

¹³¹ *Id.* (quoting Army IG, Interview of MAJ Paul Burney at 11 (Apr. 28, 2006)).

¹³² *Id.* at 52 (citing the Committee staff interview of MAJ Paul Burney (Aug. 21, 2007); Committee staff interview of [REDACTED] (Sept. 13, 2007)).

Burney, MAJ Leso, and Dave Becker.¹³³ The focus of the group seems to be on developing new techniques and implementing “camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees.”¹³⁴ With the established goal of “controlled chaos,” the participants began with a discussion of the BSCT Memo and addressed the use of force against detainees.¹³⁵ Additionally, the participants discussed the implementation of possible new experiments, including the use of truth serum. The group found that this was an interrogation method that could be used to manipulate the camp environment to “foster dependence and compliance.”¹³⁶

LTC Beaver, the Staff Judge Advocate at GTMO, played a significant role at the Counter-Resistance Strategy meeting. According to LTC Beaver, sleep deprivation, withholding food, isolation, and loss of time were legally acceptable and would be available with approval.¹³⁷ Following a discussion about the need to create “controlled chaos” at GTMO, LTC Beaver advised the attendees that some techniques should be hidden from the ICRC to avoid “a lot of negative attention.”¹³⁸ The minutes do not reflect a recommendation by LTC Beaver to halt the harsher techniques.¹³⁹

Support for this plan detailed at the Counter Resistance Strategy Meeting was not universal. Deputy Commander of the CITF Mark Fallon sent the following email concerning the Counter Resistance Strategy Meeting Minutes:

We need to ensure seniors at OGC [Office of the General Counsel] are aware of the 170 strategies and how it might impact CITF [Criminal Investigative Task Force] and Commissions. This looks like the *kinds of stuff Congressional hearings are made of*. Quotes from LTC Beaver regarding things that are not being reported give the *appearance of impropriety*. Other comments like ‘It is basically subject to perception. *If the detainee dies you’re doing it wrong*’ and ‘Any of the techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat *any possible accidents*’ seem to *stretch beyond the bonds of legal propriety*. Talk of ‘wet towel treatment’ which results in the lymphatic gland reacting as if you are suffocating, would in my opinion, *shock the conscience* of any legal body looking at using the results of the interrogations or possibly even the interrogators. *Someone needs to be considering how history will look back on this.*¹⁴⁰

¹³³ App. G at 1.

¹³⁴ *Id.*

¹³⁵ *Id.* at 1–2. For further discussion on the techniques used and the detainee they were used on (ISN 63) see *infra* Part III.

¹³⁶ *Id.* at 1–2.

¹³⁷ *Id.* at 2.

¹³⁸ *Id.* (“We may need to curb the harsher operations while ICRC is around. *It is better not to expose them to any controversial techniques . . .* The ICRC is a serious concern. They will be in and out, scrutinizing our operations, unless they are displeased and decide to protest and leave. This would draw a lot of negative attention”).

¹³⁹ *Id.* at 1–2.

¹⁴⁰ App. G.

Seven days after this meeting, BG Baccus was replaced by MG Miller.¹⁴¹ Whether the Counter Resistance Strategy Meeting impacted BG Baccus's departure is not clear. However, BG Baccus represented a traditional approach to detention, and those present at the meeting stated that the key was to "disrupt . . . normal camp operations."¹⁴² Based on statements made by BG Baccus in public interviews, he was intentionally thwarting Intel's attempts to disrupt the camp environment.¹⁴³ After this meeting, "controlled chaos" was the new norm at GTMO.

D. Criticism of the BSCT's Techniques

On October 11, 2002, following the BSCT Memo and Counter Resistance Strategy Meeting nine days prior, LTC Phifer sent a memorandum to MG Dunlavey requesting approval for more severe interrogation techniques, known as EITs.¹⁴⁴ This memo "was largely drawn from the October 2, 2002 memorandum that the GTMO BSCT had written."¹⁴⁵ LTC Phifer's memo (EIT Memo), however, did not contain any of the reservations raised at the conclusion of the BSCT Memo, including concerns that the "interrogation tools outlined [in the BSCT Memo] could affect the short term and/or long term physical and/or mental health of the detainee."¹⁴⁶

The EIT Memo detailed three categories of interrogation techniques for use during interrogation sessions as well as strategies for use on cell blocks so that the detainees' environment would be controlled even when they were not being interrogated.¹⁴⁷ The Category I techniques were available to use on all detainees and did not require permission.¹⁴⁸ Use of the Category II techniques required permission from Officer in Charge of the Interrogation Section.¹⁴⁹ Finally, requests to use Category III techniques had to be submitted to the Director of JIG for approval and were only meant to be used against the "most uncooperative detainees (less than 3%)."¹⁵⁰

MG Dunlavey submitted the EIT Memo to General James Hill, who then forwarded the Memo to General Richard Myers, Chairman of the Joint Chiefs of Staff. The military services were asked to comment on the EIT Memo, and in their responses, each branch disagreed with intelligence's assertion that all of the strategies were legal:

- The Air Force expressed "serious concerns regarding the legality of many of the proposed techniques," believing that some could be considered "torture" and that "an in-depth legal and policy assessment" needed to be conducted.¹⁵¹

¹⁴¹ See *supra* Part I.B.

¹⁴² App. G.

¹⁴³ *Baccus Interview*, *supra* note 33.

¹⁴⁴ *Senate Report*, *supra* note 20, at 50; Memorandum from Jerald Phifer for Commander, JTF-170 1 (Oct. 11, 2002) available at <http://www.defense.gov/news/Jun2004/d20040622doc3.pdf> [hereinafter *Phifer Memo*] (on file with author).

¹⁴⁵ *Senate Report*, *supra* note 20, at 61.

¹⁴⁶ *Id.* at 52.

¹⁴⁷ *Id.* at 51-52.

¹⁴⁸ See *Phifer Memo*, *supra* note 144, at 1.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 2.

¹⁵¹ *Senate Report*, *supra* note 20, at 67.

- The Navy “concur[red] with developing a range of advanced counter-resistance techniques,” but recommended that “a more detailed interagency legal and policy review be conducted on the . . . proposed techniques.”¹⁵²
- The Marine Corps “disagree[d] with the position that the proposed plan [was] legally sufficient.”¹⁵³
- The Army “concur[red] in the recommendation for a comprehensive legal review of th[e] proposal in its entirety by the Department of Defense and the Department of Justice” and found that some of the Category III techniques “appear[red] to be clear violations of the federal torture statute.”¹⁵⁴
- The FBI found fault with the techniques as well.¹⁵⁵

The only support for the proposals came from LTC Beaver, Staff Judge Advocate at GTMO, who also submitted her professional legal opinion on the EIT Memo, finding that the “proposed strategies do not violate applicable federal law.”¹⁵⁶

Despite concerns raised by all branches of the military and the FBI about the techniques, as well as requests for a more comprehensive legal review, on December 2, 2002, SECDEF Rumsfeld officially authorized the use of EITs.¹⁵⁷ Just eight days later, on December 10, 2002, a “JTF GTMO ‘SERE’ Interrogation Standard Operating Procedure” (SERE SOP) was produced.¹⁵⁸ The SOP indicated that GTMO interrogators were to use the SERE techniques against the detainees in GTMO. It is unclear whether the SERE SOP was ever approved by MG Miller, COL Sanders or LTC Moss. The document does resurface again, however, with some telling handwritten notes. At some point after the document was written on December 12, 2002, the title was changed to “JTF GTMO *Management* Interrogation Standard Operating Procedure,” with “Management” replacing “SERE.”¹⁵⁹ SERE was also replaced with management in the subject of the memo. Finally, to make sure no mentions were missed, a note at the top read “All Reference to SERE will be removed as per Lt. Col. Moss.”¹⁶⁰ This is the first evidence of a determination to change only the name of the techniques to be used on detainees, rather than a

¹⁵² *Id.* at 67–68.

¹⁵³ *Id.* at 68.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 103.

¹⁵⁶ Memorandum from LTC Diane Beaver to Commander, Joint Task Force 170 (Oct. 11, 2002) (on file with author). See Section II.E. Working Group, for discussion of the Torture Memos, which LTC Beaver may have been relying upon for this determination.

¹⁵⁷ *Review of DoD-Directed Investigations*, *supra* note 85, at 91 (Memorandum for Secretary of Defense from General Counsel William J. Haynes II, Subject: Counter-Resistance Techniques (Jan. 15, 2003) (signed and approved by Donald Rumsfeld on Dec. 2, 2002)). While approving the memorandum, SECDEF Rumsfeld hand wrote on the document “However, I stand for 8-10 hours a day. Why is standing limited to 4 hours? D.R.” *Id.* This initialed note is in reference to the counter-resistance recommended technique of making detainees stand for extended periods of time. *Id.*

¹⁵⁸ *JTF GTMO “SERE” Interrogation SOP*, JTF-GTMO (Dec. 10, 2002) [hereinafter *SERE SOP*] (App. F).

¹⁵⁹ App. F (emphasis added).

¹⁶⁰ While the document changes are undated, the changes must have occurred between its creation (Dec. 10, 2002) and the end of Moss’s tenure at GTMO (June 2003). See *Testimony of a Former Interrogation Control Element Chief*, CENTER FOR THE STUDY OF HUMAN RIGHTS IN THE AMERICAS, available at <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-interrogators/testimony-of-a-former-interrogation-control-element-chief>. It can be inferred that the testimony is from LTC Moss, as the SERE SOP indicates he was the ICE Chief on December 10, 2002.

change of the techniques themselves. This marked the beginning of a pattern that would continue for years to come, casting a shadow over American history.¹⁶¹

On January 15, 2003, just over one month after approving the EITs, SECDEF Rumsfeld issued a memo for South Com Commander General Hill, withdrawing his authorization for use of Category II and Category III techniques (i.e., the EITs).¹⁶² The memo did not provide an explanation, but it did contain an exception: “Should you determine that particular techniques in either of these categories are warranted in an individual case, you should forward that request to me.”¹⁶³ To do so, interrogators would have to submit a justification as well as a detailed plan of the use of the requested technique.¹⁶⁴ Therefore, SECDEF Rumsfeld believed at least some of the Category II and III EITs would remain viable options for interrogators in GTMO.

E. The Working Group

On January 15, 2003, SECDEF Rumsfeld also created a “Detainee Interrogation Working Group” (Working Group) to develop a new interrogation policy to replace the EITs.¹⁶⁵ The group was to be comprised of representatives from the DoD’s OGC, the Office of the Under SECDEF for Policy, the Military Departments, and the Joint Staff.¹⁶⁶ SECDEF Rumsfeld tasked the Working Group with assessing the “legal, policy, and operational issues relating to the interrogations of detainees held by the United States Armed Forces in the war on terrorism.”¹⁶⁷ The final work product of the Working Group was to be a list of interrogation techniques, with opinions on the effectiveness of each, to serve as an alternative to the newly-rescinded EITs.¹⁶⁸

David Becker, the former JTF-GTMO ICE, who was employed by the DIA as a civilian, was once again involved in the brainstorming of different techniques to be used against detainees in GTMO. Becker was tasked with providing an overview of interrogation techniques at the first Working Group meeting.¹⁶⁹ In particular, the Working Group encouraged Becker to discuss aggressive and painful techniques.¹⁷⁰ This task was intended to be performed very quickly, with a final report due to SECDEF Rumsfeld only fifteen days after the Working Group’s creation.¹⁷¹

¹⁶¹ See *infra* Section II.E. The practice of merely changing the name of the techniques rather than the actual techniques was used in the Working Group as well. *Id.*

¹⁶² Memorandum for Commander U.S. SOUTHCOM from Sec’y of Def. Donald Rumsfeld, Subject: Counter-Resistance Techniques (Jan. 15, 2003), available at <http://www.defense.gov/news/Jun2004/d20040622doc8.pdf> [hereinafter *Counter-Resistance Techniques Memo*] (on file with author).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Memorandum for the Gen. Counsel of the Dept. of Def. from Sec’y Rumsfeld, Subject: Detainee Interrogations (Jan. 15, 2003), available at <http://www.defense.gov/news/Jun2004/d20040622doc8.pdf> [hereinafter *Detainee Interrogations Memo*] (on file with author).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Senate Report*, *supra* note 20, at 111; *Detainee Interrogations Memo*, *supra* note 165.

¹⁶⁹ *Id.* at 110–11 (citing *Proposed Agenda, Working Group Meeting* (Jan. 23, 2003))

¹⁷⁰ *Id.* (citing Committee staff interview of David Becker (Sept. 17, 2007)).

¹⁷¹ See *Detainee Interrogations Memo*, *supra* note 165. The Working Group’s report did not meet this deadline as it was submitted on April 4, 2003, nearly three months after SECDEF Rumsfeld’s memo. Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational

Becker presented the Working Group with thirty-six interrogation techniques from numerous sources.¹⁷² While some techniques provided by Becker to the Working Group were drawn from the Army Field Manual and Category II techniques of the EIT Memo, the techniques that Becker described as the “most aggressive and controversial” came from Category III of the EIT Memo.¹⁷³ Becker included all four of the Category III techniques within his report.¹⁷⁴ He also encouraged the Working Group to consider the use of SERE tactics, just as he had suggested during his time as ICE Chief in GTMO.¹⁷⁵ In other words, Becker’s recommendations were a repetition of past suggested techniques, falling short of the replacement function they were supposed to serve.

Becker acknowledged that the Category III techniques would not comport with the Geneva Convention.¹⁷⁶ Notwithstanding, Becker continued to review the effectiveness of each Category III technique, which he had already described as the “most aggressive and controversial,” and he found specifically that the use of a wet towel and dripping water was “very effective.”¹⁷⁷ This determination was made even though Becker admitted that there were “wide ranging policy issues” surrounding this technique and conceded that it was “no longer in use at SERE schools.”¹⁷⁸ Additionally, Becker found water boarding to be “very effective” and similar to the wet towel and dripping water technique.¹⁷⁹

On January 27, 2003, the Working Group issued a draft report finding that many of the SERE techniques were effective in interrogations, including water boarding.¹⁸⁰ A week later, on February 4, 2003, the Working Group began to circulate the draft of its final report, which was almost immediately met with criticism from all sides.¹⁸¹ Then-Captain (CPT) Jane Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, found aspects of the report, including the characterizations of international law, to be “absolutely wrong legally.”¹⁸² Three Judge Advocate General (JAG) attorneys, Air Force JAG Jack Rives, Navy JAG Michael Lohr, and Army JAG Thomas Romig, as well as Staff Judge Advocate to the Commandant of the Marine Corps Kevin Sandkuhler, found fault with the Working Group draft, citing “serious concerns about the report and the techniques used.”¹⁸³ The lawyers also expressed concerns regarding

Considerations (Apr. 4, 2003), available at <http://www.defense.gov/news/Jun2004/d20040622doc8.pdf> [hereinafter *Working Group Report*] (on file with author).

¹⁷² Sources included the Army Field Manual 34-52 and the October 11, 2002 GTMO request. *Senate Report, supra* note 20, at 111 (citing Committee staff interview of David Becker (Sept. 17, 2007)).

¹⁷³ *Id.* at 112 (citing List of interrogation techniques compiled by DIA at 3).

¹⁷⁴ *Id.* See *Working Group Report, supra* note 171. The four Category III techniques are as follows: “use of scenarios to convince the detainee that death or severely painful consequences are imminent; exposures to cold weather or water; use of a wet towel and dripping water; and the use of mild, non-injurious physical contact.” *Senate Report, supra* note 20, at 112.

¹⁷⁵ *Senate Report, supra* note 20, at 112 (citing List of interrogation techniques compiled by DIA at 3); see *supra* Part II.C.

¹⁷⁶ *Id.* (citing List of interrogation techniques compiled by DIA at 3).

¹⁷⁷ *Id.* at 113 (citing List of interrogation techniques compiled by DIA at 3).

¹⁷⁸ *Id.* at 113 (citing List of interrogation techniques compiled by DIA at 3).

¹⁷⁹ *Id.* at 113 (citing List of interrogation techniques compiled by DIA at 3).

¹⁸⁰ *Id.* at 123.

¹⁸¹ *Id.* at 126–27.

¹⁸² *Id.* at 126 (citing Committee staff interview of RADM Jane Dalton at 175 (Apr. 10, 2008)).

¹⁸³ *Id.* at 126; Memo from MG Jack Rives to Mary Walker, *Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S.*

potential liability for service members and interrogators, as well as the future effects on treatment of U.S. prisoners of war.¹⁸⁴

Alberto Mora, General Counsel of the Navy, also served on the Working Group.¹⁸⁵ According to Mora, “contributions from the members of the Working Group . . . began to be rejected if they did not conform to the OLC [Office of Legal Counsel] guidance.”¹⁸⁶ Mora objected to the OLC guidance in the form of the OLC Memo, an early draft of what would become the Torture Memos,¹⁸⁷ finding the legal reasoning flawed, and made his objections known.¹⁸⁸ These objections fell on deaf ears, however, and Mora anticipated rejecting the Working Group’s final version.¹⁸⁹ In fact, Mora advised William J. Haynes, General Counsel of the DoD, to “stick the [Working Group] report in a drawer and ‘never let it see the light of day again.’”¹⁹⁰ After receiving a draft on March 2, 2003, Mora found it as unacceptable as its predecessors, and on March 8, 2003, Mora met with Haynes, who thanked Mora for his work.¹⁹¹ When Mora never received a final version of the Working Group report, he concluded that it had never been finalized.¹⁹² It is unclear how many other members of the Working Group who dissented were never given the opportunity to approve the final draft.

The report was finalized without the approval of Mora and possibly others, and it conspicuously omitted the word “SERE,” which had been present in past drafts.¹⁹³ This is consistent with the indication from the SERE SOP that the term “SERE” was no longer favored.¹⁹⁴ The final report was issued on April 4, 2003 and included individual evaluations of each interrogation technique.¹⁹⁵ The Working Group released its report a month after the Yoo

Armed Forces in the War on Terrorism (Feb. 5, 2003); Memo from BG Kevin Sandkuhler to Mary Walker, *Working Group Recommendations on Detainee Interrogations* (Feb. 27, 2003); Memo from U.S. Navy Judge Advocate General RADM Michael Lohr to Air Force General Counsel Mary Walker, *Working Group Recommendations Relating to Interrogation of Detainees* (Feb. 6, 2003).

¹⁸⁴ *Senate Report*, *supra* note 20, at 126–27.

¹⁸⁵ Memorandum from Alberto Mora for Inspector Gen., Dept. of Navy (Jul. 7, 2004), *available at* http://www.aclu.org/files/pdfs/safefree/mora_memo_july_2004.pdf [hereinafter *Mora Memo*].

¹⁸⁶ *Id.* at 17.

¹⁸⁷ The Torture Memos are a series of Memos written by John Yoo and Jay Bybee that advise, among other things, that the Geneva Conventions did not apply to detainees of the war in Afghanistan. The Memos defined torture both a complex and broad manner in use against detainees, seemingly to protect interrogators from later being charged with committing torture. *A Guide to the Memos on Torture*, THE NEW YORK TIMES, http://www.nytimes.com/ref/international/24MEMO-GUIDE.html?_r=0 (last accessed Mar. 2, 2013). LTC Beaver may have been relying upon for these memos for her determination that the techniques did not violate federal law. To view the memos directly, *see* The Bush Admin’s Secret OLC Memo, ALCU, <http://www.aclu.org/accountability/olc.html> (last accessed Mar. 2, 2013).

¹⁸⁸ *Mora Memo*, *supra* note 185, 17–18.

¹⁸⁹ *Id.* at 18.

¹⁹⁰ *Id.* at 19.

¹⁹¹ *Id.* at 19–20.

¹⁹² *Id.*

¹⁹³ *Senate Report*, *supra* note 20, at 124.

¹⁹⁴ App. F.

¹⁹⁵ *Working Group Report*, *supra* note 171, at Exhibits 1–3.

memo, which concluded the federal anti-torture statute prohibited only those acts amounting to “serious physical injury, such as organ failure, impairment of bodily functions or even death.”¹⁹⁶

SECDEF Rumsfeld approved twenty-four of the Working Group’s recommended counter-resistance techniques and provided no explanation as to why the remaining eleven¹⁹⁷ were rejected.¹⁹⁸ Techniques 1-17 were techniques that had been drawn from the Army Field Manual.¹⁹⁹ The remaining seven interrogation techniques approved by SECDEF Rumsfeld did not have a basis in the Army Field Manual.²⁰⁰ Of the remaining seven, all but sleep adjustment²⁰¹ can be traced back to the BSCT Memo, which served as the basis for the October 11, 2002 EIT Memo written from LTC Phifer to MG Dunlavey.²⁰² This is another example of “new techniques” that were new in name only. Despite SECDEF Rumsfeld’s selective approval, rejected techniques did remain available in GTMO going forward. SECDEF Rumsfeld retained the right to grant individual approval of written requests for techniques outside the scope of the twenty-four techniques that were given blanket approval.²⁰³

III. LAB RATS: THE USE OF BATTLE LAB TECHNIQUES

A. Drug Use and Abuse: The Role of Drugs in the Interrogation Process

Another element of GTMO’s “Battle Lab” was the use of drugs on detainees to facilitate the intelligence-gathering process. The use of drugs for interrogation purposes has been studied and researched extensively by the CIA and DIA for almost fifty years.²⁰⁴ Beginning in January of 2002, it was standard protocol to give detainees arriving at GTMO a 1250 milligram (mg)

¹⁹⁶ Memorandum from John Yoo for William J. Haynes, General Counsel of the Dep’t of Defense (Mar. 14, 2003) available at http://www.aclu.org/pdfs/safefree/yoo_army_torture_memo.pdf (last accessed Mar. 2, 2013).

¹⁹⁷ The eleven denied techniques are as follows, according to the number assigned by the working group: 20: hooding; 21: mild physical contact; 26: threat of transfer; 28: use of prolonged interrogations; 29: forced grooming; 30: prolonged standing; 31: sleep deprivation; 32: physical training; 33: face slap/ stomach slap; 34: removal of clothing; 35: increasing anxiety by use of aversions. *Working Group Report*, *supra* note 171, at Exhibits 1–3.

¹⁹⁸ *Counter-Resistance Techniques Memo*, *supra* note 162.

¹⁹⁹ *Working Group Report*, *supra* note 171, at 62.

²⁰⁰ Those techniques are: 18: Change of Scenery Up; 19: Change of Scenery Down; 22: Dietary Manipulation; 23: Environmental Manipulation; 24: Sleep Adjustment; 25: False Flag; and 27: Isolation. *Working Group Report*, *supra* note 171, at Exhibits 1–3.

²⁰¹ Sleep Adjustment is described as “[a]djusting the sleeping times of the detainee (e.g., reversing sleep cycles from night to day). This technique is NOT sleep deprivation.” *Counter-Resistance Techniques Memo*, *supra* note 162.

²⁰² Technique 25, “False Flag” can be traced to the Category I technique at 2(a)(2)(b) which allows “the interviewer ... [to] identify himself as a citizen of a foreign nation or as an interrogator from a country with a reputation for harsh treatment of detainees.” Technique 27, “Isolation” can be linked to the Category II technique at 2(b)(3), which allows for the use of isolation. Techniques 18 and 19, “Change of Scenery Up” and “Change of Scenery Down” can be traced to the Category II technique at 2(b)(4) which allows for the detainee to be interrogated “in an environment other than the standard interrogation booth.” Technique 23 “Environmental Manipulation” can be linked to Category II techniques 2(b)(4) and (5), which allow for the detainee to be interrogated “in an environment other than the standard interrogation booth” and “deprivation of light and auditory stimuli,” respectively. Technique 22 “Dietary Manipulation” which is specifically described to be “hot rations to MREs,” among other things, can be directly linked to the Category II technique 2(b)(9). See generally *Working Group Report*, *supra* note 171, at Appendix 1, 9–11; See *Phifer Memo*, *supra* note 144 at 1.

²⁰³ See *Counter-Resistance Techniques Memo*, *supra* note 162.

²⁰⁴ Controversial Drug Given To All Guantanamo Detainees Akin to Pharmacologic Waterboarding by Jason Leopold 1 Dec. 2010.

dose of mefloquine, a drug used to kill the parasites that cause malaria.²⁰⁵ The 1250 mg dose is five times greater than the standard prophylactic dose of 250 mg.²⁰⁶

This higher dosage greatly increases the risk of adverse side effects, particularly in patients with personal history or family history of mental illness.²⁰⁷ Mefloquine's side effects commonly include hallucinations, anxiety, paranoia, aggression, psychotic behavior, mood changes, depression, memory impairment, convulsions, loss of coordination (ataxia), suicidal ideation, and possibly suicide, and they can last for weeks.²⁰⁸ GTMO detainees were given mefloquine before they were tested for malaria. This means they were given an excessive dose of a drug known to cause severe psychological side effects immediately upon their arrival at GTMO regardless of whether even a normal dose of the drug was appropriate.²⁰⁹

Because the government's continued and unexplained refusal to release full medical records for all detainees, it is not possible to determine whether this conduct was gross malpractice or deliberate misuse of the drug. In either case, it does not appear plausible from the available evidence that mefloquine was given to treat malaria. This suggests a darker possibility: that the military gave detainees the drug specifically to bring about the adverse side effects, either as part of the EITs, experimentation in behavioral modification, or torture for some other purpose. The use of such a high dose at the start of detention suggests that the drug may have been intended as an aid to breaking a detainee's resistance.

OLC memos drafted by John Yoo did allow for the use of mind-altering drugs, maintaining that it was not torture unless it caused "permanent" or "profound" mental harm or damage.²¹⁰ It argued that only drugs that "penetrate to the core of an individual's ability to perceive the world around him, substantially interfering with his cognitive abilities, or fundamentally alter his personality" would qualify as torture.²¹¹ This would be satisfied by "the onset of 'brief psychotic disorder'" or "delusions or hallucinations" lasting an entire day.²¹² The memo also cited, as an example of a profound disruption, a drug or action "pushing a person to the brink of suicide, particularly where the person comes from a culture with strong taboos against suicide."²¹³ The memo, however, claims that in order to satisfy the intent standard of the criminal statute, the administration of the drug must specifically be intended to cause such prolonged harm.²¹⁴ Under this logic, torture would not result from the use of a drug with intent to cause lesser forms of psychological harm, such as anxiety, paranoia, aggression, depression, memory impairment, or mere suicidal ideation, all known side effects of high doses of mefloquine.

²⁰⁵ *Id.* at 5.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 9.

²⁰⁸ *Id.* at 7.

²⁰⁹ *See id.* at 5.

²¹⁰ Memorandum from Office of the Assistant Attorney General for Alberto Gonzales on Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340–2340A (Aug. 1, 2002), available at <http://www.justice.gov/olc/docs/memo-gonzales-aug2002.pdf> (last accessed Mar. 3, 2013).

²¹¹ *Id.* at 11.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 8.

The use of mefloquine to produce anxiety, paranoia, and other such effects at the outset of detention would fall neatly into the scheme of creating controlled chaos in the camp. It also demonstrates the perpetuation of experimental interrogation practices that lead to the image of GTMO as a Battle Lab and testing ground for world-wide interrogation training.

B. Reports of Other Experiments

After the well-known scandal at the Abu Ghraib detention facility in Iraq came to light in mid-2004, the FBI began inquiring into possible torture in GTMO and requested its agents formally report anything they may have witnessed since the facility's opening. In response, the FBI received numerous reports of questionable and experimental techniques being used against detainees in GTMO. Many reports identified the use of EITs in the base. These techniques included "unsolicited complaints include hoodings, denial of food and water, sleep deprivation, threats and wrapping detainees in Israeli flags, as well as use of dogs, strobe lights, loud noise and extreme temperatures."²¹⁵ Intel had created an environment that allowed interrogators to test out different methods of interrogation on detainees that moved far beyond the Army Field Manual.

Some of the reports show interrogators exploiting a detainee's Muslim faith. For example, an FBI agent reported that, "Another interrogator (not sure if military or contractor or other) bragged about making Detainee #(REDACTED) listen to satanic black metal music for hour (sic) and hours. Then the interrogator dressed as a Catholic Priest and baptized the detainee in order to save him."²¹⁶ Additionally, an agent reported a female interrogator who touched a detainee inappropriately and tricked him into believing she was menstruating, which significantly disturbed the detainee.²¹⁷ Other methods involved causing the sleep deprivation of detainees. According to one FBI agent,

I occasionally saw sleep deprivation interviews with strobe lights and two different kinds of loud music. I asked one of the interrogators what they were doing and they said that it would take approximately four days to break someone doing an interrogation. 16 hours on with the lights and music and four hours off. The sleep deprivation and the lights and alternating beats of the music would wear the detainee down. There was a time period where the interrogations were obtrusive enough that the interview rooms for an entire trailer were not available if one of these techniques were being utilized.²¹⁸

Other sleep deprivation techniques, like the "frequent flyer program," were used as well. The "frequent flyer program" involved moving detainees and their personal belongings from one cell

²¹⁵ *Id.* at 7 (internal citations omitted).

²¹⁶ Denbeaux, *supra* note 204, at 11; *ACLU0-RDI 4900* Email from REDACTED to REDACTED, THE TORTURE DATABASE (July 13, 2004, 2:17 PM), http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJFBI003658.pdf.

²¹⁷ Denbeaux, *supra* note 204, at 31 ("She touched the detainee on his shoulder, showed him the red ink on her hand and said by the way, I am menstruating. The guy threw himself on the floor and started to bang his head because he was so freaked out by the ink.") (citing *Summarized Witness Statement of MAJ [REDACTED]*, Former Operations Officer [Schmidt-Furlow Enclosures, DOD 846]).

²¹⁸ *Id.* at 11.

block to another every one to two hours, interrupting their sleep for a twenty-four hour period.²¹⁹ Each of these techniques can be used to disorient the detainees and confuse them.

As one of the few intelligence agencies, and perhaps the sole one, that did not support the experimental techniques utilized by Intel in GTMO, the FBI was treated like an outsider. For example, when a FBI agent witnessed an interrogation of Mohammed al-Qahtani (ISN 063) that was conducted with a military working dog in the room, that agent made it clear to the DoD personnel that this was inappropriate.²²⁰ In response, the DoD personnel told the agent that both he and another FBI agent were “guests and [they] should act accordingly.”²²¹ FBI agents were also kept out of certain trailers that housed interrogation rooms.²²² Like MG Baccus, those who questioned Intel’s actions were pushed to the side with their concerns ignored.

The use of EITs on detainees demonstrates the psychological and physical harm inflicted demonstrates how intelligence representatives were experimenting with legally-grey tactics at GTMO. These methods taught interrogators the value of humiliation, nuisance, and physical impact trauma to break detainees, serving well the needs of America’s Battle Lab.

C. Lab Rat: An Example of Experimentation on Detainees

From late 2002 through early 2003, Intel used Mohammed al-Qahtani (ISN 063) as a test subject for many of its experiments.²²³ Dating from November 23, 2002 to January 11, 2003, the Interrogation Log (Log) of al-Qahtani provides a detailed, daily account of his interrogations.²²⁴

1. *The Use of EITs*

Although SECDEF Rumsfeld did not officially approve the use of any EITs until December 2, 2002,²²⁵ some EITs were used to interrogate al-Qahtani as early as November 23, 2002.²²⁶ On November 12, 2002, almost a month before SECDEF Rumsfeld’s approval, LTC Phifer sent MG Miller a four page interrogation plan with an email stating, “Here is the Interrogation Plan for [Khatani]²²⁷ as approved by you.”²²⁸ The technique most frequently

²¹⁹ *Id.* at 7 n.4.

²²⁰ *Id.* at 10 n.27.

²²¹ *Id.* at 10 n.27; *ACLU-RDI 4799, THE TORTURE DATABASE* (last accessed Apr. 15, 2013), available at http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOD057576.pdf.

²²² Denbeaux, *supra* note 204, at 12. For example, agents reported that there although there were 8 interrogation rooms in each trailer, two of the eight were off limits to the FBI agents. The agents also reported that sometimes entire trailers were off limits to FBI agents during interrogation. “Often DOD personnel would reserve an entire trailer when employing aggressive interview techniques [Redacted] [Redacted] [Redacted].”

²²³ It is unclear whether the interrogations continue after January 11, 2003 as this is where the Interrogation Log ends.

²²⁴ *Interrogation Log Detainee 063*, <http://www.time.com/time/2006/log/log.pdf> [hereinafter *Interrogation Log*] (last accessed Feb. 26, 2013) (on file with author).

²²⁵ *Review of DoD-Directed Investigations*, *supra* note 85, at 91 (citing Memorandum for Secretary of Defense from General Counsel William J. Haynes II, Subject: Counter-Resistance Techniques (Jan. 15, 2003) (signed and approved by SECDEF Rumsfeld on Dec. 2, 2002)).

²²⁶ *Interrogation Log*, *supra* note 224. While the Log begins on November 23, 2002, there is no indication this is the first interrogation session with al-Qahtani.

²²⁷ Detainee al-Qahtani is also referred to by the government as Khatani. *Interrogation Log*, *supra* note 224.

²²⁸ *Senate Report*, *supra* note 20, at 75.

utilized was a Category II technique that allowed for 20-hour interrogations. The Log details that, over that fifty day period, al-Qahtani was interrogated 20-hours every day with very few exceptions.²²⁹ The very first entry of the Log also describes hooding, another Category II technique.²³⁰

MG Miller testified to the use of 20-hour interrogations. According to the Schmidt Report, MG Miller was aware that an individual was “interrogated for 20 hours a day with 4 hours of sleep from 23 November 2002 until 15 January 2003.”²³¹ Whether MG Miller was describing al-Qahtani’s or another’s interrogations is unclear, as the name of the detainee has been redacted.²³² Either way, it is clear that at least one detainee was subject to long-term 20-hour interrogations, and these interrogations began prior to receipt of authorization to use such a technique.

Although the Log begins on November 23, 2002, al-Qahtani was subject to interrogations at least two months earlier. At the October 2, 2002 BSCT meeting, participants discussed al-Qahtani, “recalling how [al-Qahtani] has responded to certain types of deprivation and psychological stressors.”²³³ Immediately following this, the BSCT stated that “psychological stressors are extremely effective (i.e., sleep deprivation, withholding food, isolation, loss of time).”²³⁴ Although it is not clearly stated whether all of these tactics were used on al-Qahtani prior to October 2, 2002, examples of each are present in his Log.²³⁵

After the EITs were approved on December 2, 2002,²³⁶ many were tested and used on al-Qahtani. He was subjected to the Category II techniques of removal of clothing²³⁷ and forced grooming,²³⁸ as well as the Category III technique of mild, non-injurious physical contact.²³⁹ In addition to serving as a test subject for these interrogation techniques, interrogators also used him as a means to discover the true limit of the human body and mind.

2. *Finding the Limits: Organ Failure*

Al-Qahtani also received many medical treatments, often without his consent, during his extended period of interrogation. The first medical treatment was recorded in the Log on November 24, 2002 when he was given an IV and evaluated by a doctor “to ensure that he [was] physically able to continue [the interrogation].”²⁴⁰ While meeting with the doctor, “Detainee

²²⁹ *Interrogation Log*, *supra* note 224.

²³⁰ *Id.*

²³¹ *Schmidt-Furlow Deferred*, *supra* note 4 (*Summarized Witness Statement of Major General Geoffrey D. Miller*, 3780).

²³² *Id.*

²³³ App. G.

²³⁴ *Id.*

²³⁵ *See generally Interrogation Log*, *supra* note 224.

²³⁶ *Review of DoD-Directed Investigations*, *supra* note 85, at 91 (Memorandum for Secretary of Defense from General Counsel William J. Haynes II, Subject: Counter-Resistance Techniques (Jan. 15, 2003) (signed and approved by SECDEF Rumsfeld on Dec. 2, 2002)).

²³⁷ *Interrogation Log*, *supra* note 224, at Dec. 20, 2002.

²³⁸ *Id.* at Dec. 3, 18, 20, 2002, Jan. 11, 2003.

²³⁹ *Id.* at Dec. 4, 13, 21.

²⁴⁰ *Id.* at Nov. 24, 2002.

stated that he wanted to sign a form or a release stating that he did not want any medications. The doctor explained that no such form exists.”²⁴¹ In the days and weeks that followed, the Log revealed that al-Qahtani had his blood drawn twice, received an EKG, CT scan, and ultrasound, had his blood pressure checked every few days, and had his pulse checked fifteen times (occasionally multiple times per day).²⁴²

Al-Qahtani’s blood was drawn twice, on December 4th and December 16th, by a doctor and a corpsman, respectively.²⁴³ The first time was to check his kidney function.²⁴⁴ The Log does not provide an explanation for the second instance, and it simply states “Corpsman drew detainee’s blood.”²⁴⁵ This was likely done to satisfy the Torture Memos of August 2002, which only forbade torture that rose to the level of pain associated with “organ failure, impairment of bodily function, or even death.”²⁴⁶ So long as al-Qahtani’s kidneys were not failing, his pain level was not too high, and the torture could continue.

Throughout the interrogation, al-Qahtani’s pulse was checked by various doctors and corpsmen on 15 separate occasions, as it fluctuated dramatically (between 38 and 93 bpm) while he was being questioned.²⁴⁷ On days when his pulse was particularly extreme doctors would re-take it later in the day to ensure that it settled at a safe level.²⁴⁸ On December 19th, when his pulse was recorded three times, an entry reads “His vitals were taken again. His blood pressure was normal but his pulse rate was high at 93. The medical representative will be monitoring the detainee’s vitals closely until his pulse rate is lower.”²⁴⁹

Bags of IV fluid were also regularly administered to al-Qahtani during the interrogations and were recorded on over fifteen days throughout the Log.²⁵⁰ The IV was purportedly used to hydrate al-Qahtani, but on at least one occasion was used by interrogators as a tool to exert their control and power. On November 25, 2002, he was hooked to a continuous IV for 3 hours and 45 minutes, and his requests to use the restroom were repeatedly denied. The log states:

Detainee again said he has to go to bathroom. SGT R said he can go in the bottle. Detainee said he wanted to go to the bathroom because it’s more comfortable. SGT R said “You’ve ruined all trust, you can either go in the bottle or in your pants.” Detainee goes in his pants. SGT A continued approach.²⁵¹

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* at Dec. 4, 2002.

²⁴⁵ *Id.* at Dec. 16, 2002.

²⁴⁶ Memorandum from Jay S. Bybee, Assistant Attorney General, for Alberto R. Gonzales, Counsel to the President, (Aug. 1, 2002), available at <http://www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf>. See *infra* Section II.F. for a more detailed look at the Torture Memos.

²⁴⁷ *Id.*; A normal resting heart rate for adults ranges from 60 to 100 bpm. Edward Laskowski, *Fitness: What’s a normal resting heart rate?*, MAYO CLINIC, <http://www.mayoclinic.com/health/heart-rate/AN01906> (last accessed Feb. 26, 2013).

²⁴⁸ *Interrogation Log*, *supra* note 224.

²⁴⁹ *Id.* at Dec. 19, 2002.

²⁵⁰ *Id.*

²⁵¹ *Id.*

Al-Qahtani urinated on himself twice before interrogators allowed him to clean up and change his clothes, over two and one half hours after the first urination incident.²⁵²

The subject of control is present throughout the Log. In response to al-Qahtani's repeated claims of his right of control over his body, bowel movements, eating and drinking habits, sleeping habits and practice of religion, the interrogators used the EITs in combination with other techniques to demonstrate their ultimate control over al-Qahtani. This is demonstrated to al-Qahtani by way of IV feedings and medication, threats and use of forced enemas, four-hour limitations on sleep, standing and exercise to prevent sleep and denials of his requests to pray.²⁵³ This case study of one single detainee signifies the true depths of emotional, physical and psychological harm inflicted at will in GTMO. The systematic violence and pain inflicted stem from the untested EITs. Interrogators used the detainees as lab rats in their effort to determine, in the future, just how far the human body and spirit could be pushed before organ failure and death. The detainees are truly the lab rats of the country in GTMO, America's Battle Lab, suffering at the hands of intelligence officers untrained in the untested methods of EITs for the benefit of future intelligence gathering.

IV. WORLD WIDE INTERROGATION

The Executive Order now made JTF-170 "responsible for the worldwide management of interrogation of suspected terrorists detained in support of us (sic) military operations . . ." and noted this was "a significant expansion of the current mandate."²⁵⁴

When the detainees in GTMO were subject to psychological and physical experimentation, most notably the EITs, the conclusions drawn from these interrogations were not obtained in a vacuum. The techniques, their effects on the detainees, and conclusions drawn were meant to serve as information to be distributed to bases across the globe, making GTMO effectively "responsible for worldwide management of interrogation of suspected terrorists detained in support of US (sic) military operations."²⁵⁵ Therefore, not only was GTMO operating as America's Battle Lab, but was also transmitting information of the interrogation experimentation across the world.

A. The Seeds of Interrogation Guidance: Bagram

1. *Subjects of Tutelage: Bagram Special Missions Unit Assessment Team*

In early to mid-2002, there was a Special Missions Unit (SMU) operating in Bagram, Afghanistan.²⁵⁶ While present, the SMU in Bagram performed no interrogations until after they visited Guantanamo Bay in the Fall of 2002. The SMU spent their time in Bagram observing

²⁵² *Id.* at Nov. 25, 2002.

²⁵³ *See generally id.*

²⁵⁴ App. H.

²⁵⁵ *Id.*

²⁵⁶ *Senate Report, supra* note 20, at 148.

interrogations conducted by the Combined Joint Task Force 180 (CJTF-180), which controlled US forces in Afghanistan, rather than conducting their own.²⁵⁷

MG Dunlavey, who gave up command of JTF-170 in GTMO just as the SMU team was arriving, subsequently stated, “The SECDEF said he wanted a product, and he wanted intelligence now. He told me what he wanted; not how to do it.”²⁵⁸ As a result of the apparent expansion of scope in operation bounds, two actions were taken. First, the SMU assessment team was dispatched to GTMO, from which they returned with a gamut of new physical and psychological interrogation techniques.²⁵⁹ Second, CPT Wood, responsible for coordinating interrogations in the Bagram Air Force base, requested guidance on interrogation techniques from GTMO which resulted in documents containing approval for the following: “stress positions, removal of clothing, deprivation of light and auditory stimuli, hooding, use of detainee phobias such as dogs, exposure to cold weather or water, and non-injurious physical contact such as grabbing, poking, and pushing.”²⁶⁰

After observing the techniques implemented at Bagram, the SMU TF visited GTMO in 2002 from October 8th through October 10th.²⁶¹ The timing of the visit aligned with the finalization of a memo submitted on October 11, 2002 to SOUTHCOM.²⁶² This memo requested permission to use interrogation techniques including stress positioning, use of phobias such as dogs, removal of clothing and exposure to extreme temperatures.²⁶³

The SMU visited GTMO directly after the interrogation techniques to be implemented at GTMO were being finalized. A Counter Resistance Strategy Meeting had taken place on October 2, 2002 identifying possible interrogation techniques, just prior to the SMU’s arrival.²⁶⁴ The minutes of the meeting reveal a willingness to implement harsh techniques so long as the ICRC did not discover their intention and create “negative attention.”²⁶⁵ One participant noted an indication that the interrogators had gone too far: “If the detainee dies you’re doing it wrong.”²⁶⁶ Techniques discussed include the wet towel technique, mock executions, permitting the detainee to rest only 30 minutes at a time, and truth serum.²⁶⁷

There is no documentary evidence of how the information on interrogation techniques from the CTRS Meeting was transmitted to the SMU. There are, however, notes taken by the BSCT, attendants of the CTRS Meeting described above. On October 11, 2002, the SMU TF prepared a GTMO trip report in which they recorded that the SMU TF met with the BSCT during their stay.²⁶⁸ The BSCT had recently returned from their SERE training and had already

²⁵⁷ *Id.* at 149.

²⁵⁸ Summarized Witness Statement of MG (Retired) Mike Dunlavey, AR 15-6 GTMO INVESTIGATION – EXHIBIT 12 OF 78, 1 (Mar. 17, 2005).

²⁵⁹ See [[SMU Section]] *infra*.

²⁶⁰ *Id.* at 149.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ App. G.

²⁶⁵ App. G.

²⁶⁶ App. G.

²⁶⁷ App. G.

²⁶⁸ See *Senate Report, supra* note 20, at 149

drafted the request for approval of new interrogation techniques.²⁶⁹ The trip report confirm that the SMU TF and the BSCT exchanged information, discussing: “religious oriented superstitions,” “varied schedules,” “shame,” “various disruptions of daily routines,” and “using ethnic interrogators.”²⁷⁰ SMU reports that they discussed these interrogation techniques with BSCT, methods with reach beyond the scope of the CTSR Meeting’s discussed list of experiments.

Directly after the SMU TF completed their visit to GTMO, they began conducting interrogations in Afghanistan.²⁷¹ The SMU TF also adopted an interrogation policy that reflected the policy in place in GTMO.²⁷² Thus, the SMU TF adopted the very practices that were discussed during their meeting in GTMO, the coordinator of world-wide interrogation. An investigation by the DoD Inspector General revealed that the SMU TF interrogation policy was coordinated pursuant to the 2002 memorandum of approved interrogation techniques for GTMO after their visit.²⁷³ The SMU TF’s interrogation policies in Bagram included stress positions, sleep deprivation, and use of dogs.²⁷⁴ The timeline indicates that the use of these techniques was a direct result of their meetings in GTMO with leaders in interrogation development. These techniques include those GTMO asked permission to use during the time of the SMU TF’s visit to the base. None of these techniques had ever been used by the SMU TF before this time. This indicates that GTMO interrogators were coordinating world-wide interrogation in the transmission of interrogation techniques through the SMU TF in Bagram. When bases located in the Middle East sought guidance on interrogation techniques, the prime example being Bagram and Abu Ghraib (discussed infra), they pursued their instruction from the coordinator, GTMO.

All available evidence suggests the SMU visited GTMO for the purpose of receiving training and exchanging information on interrogation techniques in the fall of 2002. This highly classified SMU with a specialized mission, seems to have been called or reported to GTMO at the crux of the time during which GTMO was in the throes of creating the process and procedures for interrogation. Not coincidentally, immediately following their return to Bagram, they began immediately implementing the techniques acquired from GTMO.

2. *Recipient of Mentorship: Bagram’s leadership*

Shortly after the SMU TF returned, a formal request was sent to GTMO by the leader of the intelligence unit in Bagram, separate and apart from the SMU TF, seeking guidance on the parameters of permitted interrogations. In January of 2003, LTC Moss, an officer at GTMO, was asked about interrogation parameters by then-First Lieutenant (1LT) Carolyn Wood, the Officer in Charge of Intelligence Collection in Bagram.²⁷⁵ In response, LTC Moss forwarded SECDEF Rumsfeld’s December 2, 2002 authorization for new interrogation techniques. This

²⁶⁹ *Id.*

²⁷⁰ *Id.* (citing Memo for the Record, GITMO Assessment Visit (Oct. 11, 2002)).

²⁷¹ *Id.* at 148. Note that there were several concerns raised by the SMU TF legal advisor with LTC Beaver (present at the Counter Resistance Strategy Meeting on October 2, 2002 in GTMO). Concerns included physical violence during interrogations, including punching, choking and beating. *Id.* at 193. In addition, other government agencies refused to use SMU TF facilities because of concern with detainee treatment there. *Id.* at 194.

²⁷² *Id.* at 158.

²⁷³ *Id.* at 154.

²⁷⁴ *Id.* at 158.

²⁷⁵ *Id.* at 155.

memo included authorization for JTF-180, the taskforce operating in Bagram, to use these techniques.²⁷⁶ However, these techniques were not directly given to Bagram, which was evidenced by the intelligence leader requesting guidance from GTMO. 1LT Wood was not included in the GTMO meeting formulating the proposal to SECDEF Rumsfeld for new techniques; 1LT Wood had to go up the chain of command to the manager of intelligence, GTMO. Further evidence is inherent in the action of the forwarding of the memo, rather than a recommendation from GTMO leadership that 1LT Wood read the memo she presumably would have had if GTMO was not a manager of interrogation intelligence. GTMO acted as a holder of information and a hub of intelligence, serving as a coordinator of world-wide interrogation. This action reinforces the pattern of officers stationed abroad turning to GTMO for guidance on interrogation techniques, intimating GTMO was operating as the controlling center for interrogation instruction. Based on the knowledge that GTMO passed along their approved EIT information to Bagram, it is reasonable to assume that they were managing other bases throughout the world as well.

B. Continuation of GTMO Management: Abu Ghraib

Evidence of GTMO's leadership in world-wide interrogation can be traced to Bagram in two ways. First, the SMU TF received instruction in GTMO on interrogation techniques before the formal approval of the EITs, and second, 1LT Wood requested direction on interrogation from GTMO and received the approved memo concerning the EITs in January 2003. She was acting independent of the SMU TF. Then-1LT Wood, who looked to GTMO for leadership, was subsequently promoted to Captain, awarded a Bronze Star for her work in Afghanistan, and given command of interrogations at Abu Ghraib Hard Site Tier 1-A in August 2003. She continued her practice of turning to GTMO for management. Immediately after the opening of the Hard-Site, MG Miller, the commander in charge of GTMO, visited Abu Ghraib and left behind a series of GTMO procedures. Directly after MG Miller returned to GTMO, Lt. Gen. Sanchez, the highest ranking general in Iraq, formally adopted policies explicitly modeled after the interrogation policies in GTMO. This evidence links the world-wide interrogation management of GTMO to another theater of war: Iraq.

1. Guidance from GTMO to Iraq leadership: CPT Wood

By 2003, the influence GTMO enjoyed over foreign stations had reached Iraq. The Abu Ghraib Hard Site facilities opened on August 25, 2003, marking the beginning of abuse.²⁷⁷ In the Summer of 2003, CPT Wood had become the Interrogations Officer in Charge at Abu Ghraib, a hotbed for interrogation of the high value detainees.²⁷⁸ CPT Wood brought with her the techniques which originated in GTMO from Bagram to Abu Ghraib: "Concepts for the non-doctrinal, non-field manual approaches and practices clearly came from personnel in Afghanistan [meaning CPT Wood] and Guantanamo."²⁷⁹ Specifically, the "October 2003 SOP, likewise

²⁷⁶ *Id.*

²⁷⁷ MG George R. Fay, AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th MI Brigade 34 (Aug. 23, 2004) [hereinafter *Fay Report*].

²⁷⁸ *Senate Report, supra* note 20, at 165–66.

²⁷⁹ *Id.* at 166 ("CPT Wood stated that interrogators had used sleep deprivation and stress positions in Afghanistan and that she 'perceived the Iraq experience to be evolving into the same operational environment as Afghanistan.'")

created by CPT Wood, was remarkably similar to the Bagram (Afghanistan) Collection Point SOP.”²⁸⁰ These same interrogation techniques were subject to a Criminal Investigation Command homicide investigation for abusive interrogation practices.²⁸¹ The 2004 investigation into the abuses at Abu Ghraib detail this use:

On 16 October 2003, the JIDC Interrogation Operations Officer, CPT Carolyn A. Wood, produced an “Interrogation Rules of Engagement” chart as an aid for interrogators, graphically portraying the 12 October 2003 policy. It listed the approved approaches and identified the approaches which had been removed as authorized interrogation approaches²⁸²

The techniques approved by CPT Wood derived from those “techniques employed in JTF-GTMO,” including removal of clothing, the use of stress positions, isolation for up to thirty days and the use of detainees’ phobias.²⁸³ In addition, CPT Wood turned once more to GTMO for guidance on additional techniques, citing the “mounting pressure from higher for ‘actionable intelligence’ from interrogation operations.”²⁸⁴ The EITs passed on to CPT Wood were obtained by GTMO when they sent a direct request to SECDEF Rumsfeld for permission to use the interrogation techniques in on GTMO’s detainees. The existence of the EITs and their use was passed on to CPT Woods expressly by LTC Moss of GTMO after CPT Woods turned to GTMO interrogation leadership for guidance.²⁸⁵ CPT Wood’s actions demonstrate the control the GTMO’s interrogation procedures held in Iraq. Not only did she bring the practice of using JTF-GTMO techniques during interrogation to Abu Ghraib, she also continued her pattern of obtaining authorization and guidance from GTMO’s interrogators for use in different theaters of war.

2. *GTMO Administrative Control Over Abu Ghraib Interrogation*

MG Miller was placed in command of operations at GTMO in October of 2002.²⁸⁶ COL Britt Mallow, Commander of the CITF from 2000 to 2005, reported that MG Miller “referred to GTMO as a ‘Battle Lab’ meaning that interrogations and other procedures there were to some degree experimental, and their lessons would benefit DOD in other places.”²⁸⁷ In addition, according to BG Janis Karpinski, who was in charge of detention operations at the Abu Ghraib prison during what would become a well-publicized scandal of detainee treatment, MG Miller

She said that she used her ‘best judgment and concluded [the techniques] would be effective tools for interrogations at [Abu Ghraib].’); *Fay Report*, *supra* note 277.

²⁸⁰ *Fay Report*, *supra* note 277, at 29.

²⁸¹ *Id.* at 29.

²⁸² *Id.* at 28.

²⁸³ *Id.* at 29.

²⁸⁴ *Senate Report*, *supra* note 20, at 166.

²⁸⁵ CPT Wood was abreast of the legal defense of the Department of Justice of the GTMO EITs in her statement echoing the contention of the Torture Memos: “I understood the Afghanistan rules were a little different because the detainees were not classified as EPWs. It was, ‘use techniques in the spirit of the Geneva Convention,’ not, ‘you will apply the Geneva Convention.’” *Id.*

²⁸⁶ *See supra* Part I.B.

²⁸⁷ *Senate Report*, *supra* note 20, at 43. Note that COL Mallow held an incredibly powerful position. His team was responsible for prosecuting al Qaeda suspected terrorists. Also, it would appear the statement from MG Miller was likely made in the span of his tenure at GTMO, from November 2002 through January 7, 2004.

went to Abu Ghraib to “Gitmoize” it.²⁸⁸ MG Karpinski stated that when MG Miller first arrived and had a meeting BG Karpinski, “that he used the expression that he was going to ‘Gitmoize’ the operation. And military intelligence, they were all listening and paying attention and taking notes.”²⁸⁹ An FBI agent who had been in GTMO responded to the idea of MG Miller “gitmoizing” Abu Ghraib:

From what cnn reports, gen karpinsky at Abu Ghraib [sic] said that gen miller came to the prison several months ago and told her they wanted to “gitmotize” abu Ghraib. I am not sure what this means. However, if this refers to intell gathering as I suspect, it suggests he has continued to support interrogation strategies we not only advised against, but questioned in terms of effectiveness. Yesterday, however, we were surprised to read an article in stars and stripes, in which gen miller is quoted as saying that he believes in the rapport-building approach. This is not what he was saying at gtmo when I was there. [REDACTED] and I did cart wheels. The battles fought in gitmo while gen miller he was there are on the record.²⁹⁰

MG Miller visited Abu Ghraib beginning August 31, 2003, six days after the Hard Site opened and directly after CPT Wood requested guidance from GTMO on interrogation techniques.²⁹¹ His visit brought many elements of GTMO interrogation tactics to Abu Ghraib. First, MG Miller introduced GTMO written procedures at Abu Ghraib, leaving behind a series of SOPs approved for GTMO.²⁹² Second, the model for interrogation teams in GTMO, “Tiger Teams,” was subsequently used in Abu Ghraib after MG Miller’s departure.²⁹³ The concept of Tiger Teams derives from GTMO interrogation practices and involves the use of one intelligence analyst and one interrogator per team, in addition to the interpreter.²⁹⁴ This evidences the administrative control of GTMO over the management of Abu Ghraib, setting up the interrogation team structure of sites abroad. Finally, according to COL Pappas, the senior military officer in charge of the intelligence brigade assigned to Abu Ghraib, MG Miller recommended the use of working dogs during interrogations, claiming they had been effective at GTMO.²⁹⁵ As a result of MG Miller’s recommendation, dogs were delivered at Abu Ghraib on November 20, 2003, and abuse of detainees with dogs commenced almost immediately afterwards.²⁹⁶

²⁸⁸ Interview Janis Karpinski, Frontline (Aug. 5, 2005) (transcript published Oct. 18, 2005), *available at* <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/karpinski.html> (last accessed Apr. 15, 2013) [hereinafter *Karpinski Interview*].

²⁸⁹ *Id.*

²⁹⁰ Mark Denbeaux, et al., *Torture: Who Knew? An Analysis of the FBI and Department of Defense Reactions to Harsh Interrogation Methods at Guantanamo*, SETON HALL CENTER FOR POLICY AND RESEARCH, 9 n.20 (Apr. 1, 2009).

²⁹¹ *Id.* at 92.

²⁹² *Fay Report*, *supra* note 277, at 93.

²⁹³ *Id.* at 75.

²⁹⁴ *Id.*

²⁹⁵ *Id.* COL Pappas states, “While no ‘harsh techniques’ were [described], COL Pappas recalled a conversation with MG G. Miller regarding the use of military working dogs to support interrogations According to COL Pappas, MG G. Miller said they, GTMO, used military working dogs, and that they were effective in setting the atmosphere for interrogations” *Id.* at 92.

²⁹⁶ *Id.* at 44.

Management and administrative strategy implemented at GTMO was transposed onto operations at Abu Ghraib. After MG Miller's departure from Abu Ghraib on September 9, 2003, "a team of subject matter experts was dispatched from JTF-GTMO to Abu Ghraib... to assist in the implementation of the recommendations identified by MG G. Miller."²⁹⁷ These teams also provided documents to aid Abu Ghraib interrogators: copies of current JTF-GTMO policies, SOPs, and a SECDEF letter listing approved interrogation techniques for GTMO detainees.²⁹⁸ These documents were distributed "[c]onsistent with its charter to assist in establishment of a GTMO-like operation."²⁹⁹ Between MG Miller's visit and practice of impressing GTMO procedure onto officials at Abu Ghraib and the experts sent to follow through with the changes, Abu Ghraib was effectively "gitmo-ized," demonstrating the hold that GTMO had on another base in Iraq.

3. Lt. Gen. Ricardo Sanchez Iraq Interrogation Techniques

Shortly after MG Miller's visit to Iraq, on September 14 2003, Lt. Gen. Ricardo Sanchez, commander stationed at Abu Ghraib, sent a memo describing the interrogation policies to be adhered to in Iraq: "Enclosed is the CJTF-7 Interrogation and Counter Resistance Policy, modeled on the one implemented for interrogations conducted at GTMO Bay, but modified for applicability to a theater of war in which the Geneva Conventions apply."³⁰⁰ The memorandum stated that interrogation techniques from GTMO should be immediately implemented in Iraq.³⁰¹

Sanchez's memorandum listed types of interrogation techniques that were also substantially used at GTMO, including change of scenery down, dietary manipulation, environmental manipulation,³⁰² sleep adjustment,³⁰³ presence of military working dogs,³⁰⁴ sleep management,³⁰⁵ yelling, loud music,³⁰⁶ light-control³⁰⁷ and stress positions.³⁰⁸ The same

²⁹⁷ *Id.* at 93.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ Memorandum from Lt. Gen. Richardo Sanchez to Cmdr. Of U.S. CENTCOM, *CJTF-7 Interrogation and Counter-Resistance Policy* (Sept. 14, 2003).

³⁰¹ *Id.*

³⁰² "The A/C had been turned off, making the temperature in the unventilated room probably over 100 degrees. The detainee [sic] was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night." Solicited: Email from an FBI agent [Positive Responses 1, Responses-10].

³⁰³ Positive Response Number 4, Responses 44.

³⁰⁴ "We talked to him (Mr. [REDACTED]) several different times to let him know that we objected to the use of dogs and that we did not do business that way. It was an inappropriate measure. He told us that he [REDACTED] and I were guests and we should act accordingly." *Schmidt-Furlow Deferred*, *supra* note 4.

³⁰⁵ "I occasionally saw sleep deprivation interviews with strobe lights and two different kinds of loud music. 16 hours on with the lights and music and four hours off." Solicited: Email from an FBI agent [Positive Response Number 4, Responses 44].

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ "[D]uring the summer of 2002, [REDACTED] walked into a camp Delta observation room and noticed a detainee in an interview room [...] handcuffed with cuffs chained to his waist. [REDACTED] advised the chains were adjusted to force the detainee to stand in a "baseball catcher's position[.]" Solicited: Email from an FBI agent [Positive Response Number 6, Responses-62].

techniques used in GTMO were exactly the same techniques used in Abu Ghraib, which were criticized for leading to abuse in the Fay Report.³⁰⁹ The FBI made it abundantly clear that these same techniques were taking place in GTMO prior to the September 14, 2003 memo.³¹⁰ These policies in Iraq were not only “modeled” after GTMO, but replications of the Interrogation and Counter-Resistance Policy at GTMO.³¹¹ The correlation of this memorandum with the recent departure of MG Miller demonstrates further the influence that GTMO maintained over Abu Ghraib, an influence mirrored in Bagram.³¹² Is it any coincidence that the two case samples included in this report as being subject to interrogation training from GTMO were also the sites of the worst human rights abuses in the Middle East by American forces, prompting the Senate’s inquiry? GTMO operated as a Battle Lab, a world where experimentation on the defenseless served to generate data with which to counsel and train interrogators at military facilities across the globe. GTMO served as the center of operations, the command center for world-wide interrogation coordination.

V. CONCLUSION

The foregoing analysis of the structure of GTMO makes it clear that detention was never the true mission of GTMO. Intel was brought to the forefront almost immediately after the opening of the camp – those that stood in its way, like BG Baccus and FBI agents, were pushed aside to allow Intel to operate without detraction or disapproval. In GTMO, Intel was provided with a playground and equipped with test subjects in order to practice and develop new interrogation techniques.

With torture standards that bordered on non-existent, Intel was able to push all boundaries – mentally, physically, and psychologically torturing detainees. Whether the torture came in the form of forced baptisms, medically-induced psychosis or extreme pain stopping just before that of organ failure, Intel had complete control. Although criticism of these techniques came at Intel from all sides, experimentation was allowed to continue with the approval of SECDEF Rumsfeld. Even when EITs became politically unpopular and approval had to be withdrawn, Intel and SECDEF Rumsfeld carried on with much of the same, under a different name.

³⁰⁹ *Fay Report*, *supra* note 277, at 28–29.

³¹⁰ *See Senate Report*, *supra* note 20, at n.35.

³¹¹ Memorandum from Lt. Gen. Richardo Sanchez to Cmdr. Of U.S. CENTCOM, *supra* note 300.

³¹² The team in charge of interrogations at Bagram, CJTF-180, released a document titled “Interrogation Techniques” which maintained that deprivation of clothing was effective and that no specific legal prohibition was controlling. *Fay Report*, *supra* note 277, at 88. The team additionally observed the use of the nudity technique approved for use at GTMO at work in Abu Ghraib. *Id.* at 88. One GTMO analyst witnesses an interrogator order a detainee to strip down to his waist, implying he would be stripped further if there was no cooperation. *Id.* at 90. The same analyst witnessed an uncooperative detainee be placed in solitary; fifteen minutes later the detainee was seen naked except for a hood over his eyes, whimpering on the floor. *Id.*, at 60. Both instances were reported to the GTMO team leader who later “could not recall” either report. *Id.* at 60. A different GTMO team member reported “a lot of detainee nakedness at Abu Ghraib.” *Id.* at 61. Another GTMO team member witnessed two female interrogators questioning a naked detainee, recalling they obtained approval from the appropriate authorities. *Id.* at 61. The same soldier reported the technique was employed at GTMO as well. *Id.* at 61. GTMO and bases in Afghanistan were often the perpetrators of the use of nudity as an interrogation technique: “Soldiers simply carried forward the use of nudity into the Iraqi theater of operations.” *Id.* at 88. Investigators into Abu Ghraib concluded that the JTF-GTMO Training Team approved and “further validated the use of unacceptable interrogation techniques.” *Id.* at 117.

These detainees were admittedly not the “worst of the worst;” they were “low-level enemy combatants” who became lab rats. The long leash and encouragement to explore harsh interrogation, coupled with the ignoring and dismissal of criticisms lead to actions that were harmful on many levels: medically, morally, politically, for accountability, and ethically. And as the center worldwide management of interrogation, the effects of Battle Lab would come to stretch far beyond the shores of Guantanamo Bay.

VI. APPENDICES

Appendix A: The SOPs: Intel’s Micromanagement of the Camp

The way in which Intel ran the camp can be seen in GTMO’s Camp Delta JDOG SOPs. The SOPs are the rules that govern camp-wide operations. They detail the functions and duties of GTMO personnel assigned to JDOG. Centered on human intelligence collection and exploitation, the SOPs effectively establish a hierarchy in which Intel is prioritized over detention operations. SOPs that appear to involve detention operations—the movement of detainees or how detainee good behavior should be rewarded—have intelligence oversight built in. Thus, the SOPs confirm JDOG’s mandate to conduct the detention mission “in a manner that supports interrogation efforts.”³¹³ Examples of Intel’s micromanagement include potential dishonorable discharge for any military personnel who discussed anything he or she may have seen or heard unless specifically directed to do so by JIG, as well as control over any comfort items or rewards given to detainees.

In-Processing and Intelligence Isolation

Intelligence asserts control over detainees from the moment they arrive and are processed at GTMO. GTMO personnel follow a manifest in which intelligence directs the order of processing for detainees.³¹⁴ Detainees are moved through stations where DNA samples are taken, identification bracelets are distributed, and the detainees are checked by medical.³¹⁵ Intelligence also reserves the right to attend in-processing and ask questions.³¹⁶

Immediately after in-processing, JIG mandates that all new detainees enter the Behavior Management Plan, a 30-day minimum isolation period, without access to either ICRC or Chaplin, designed to foster detainee dependence on the intelligence interrogator.³¹⁷ The purpose of the plan is to “enhance and exploit the disorientation and disorganization felt by a newly arrived detainee in the interrogation process. It concentrates on isolating the detainee and fostering dependence of the detainee on his interrogator.”³¹⁸ The JIG commander and the detainee’s interrogator determine the length of a detainee’s stay in isolation under a Behavior Management Plan.³¹⁹ Within the plan, JIG micromanages the rewards, such as comfort items,

³¹³ *Joint and National Intelligence Support to Military Operations*, *supra* note 6, at G-5.

³¹⁴ *Camp Delta SOP*, JTF-GTMO 4 (Mar. 28, 2003) (“Detainee Processing (Reception/Transfer/Release.)” [hereinafter *2003 GTMO SOP*]).

³¹⁵ *Id.*

³¹⁶ *Id.* at 4-14(b).

³¹⁷ *Id.* at 4-20(a).

³¹⁸ *Id.*

³¹⁹ *2004 GTMO SOP*, *supra* note 66 at 4-20(b).

and the punishment, such as segregation, that each detainee receives.³²⁰ The comfort items a detainee may receive include toilet paper, pens and paper, toothpaste, mattress, and the detainee's mail.³²¹ Once the minimum segregation time has ended, "the interrogator decides when to move the detainee into the general population."³²² The net effect of the in-processing SOP's is that interrogators do not have to wait in the background while JDOG processes each detainee, but instead can interact with detainees of their choosing from the beginning.

Detainee Classification and Rewards System

Once initial procedures are complete, intelligence continues to micromanage camp operations through a Detainee Classification System. The Detainee Classification System is described as "a five level system of rewards based on the premise that a detainee's behavior determines the privileges they are allowed."³²³ JIG exerts complete control over Classification Level 5 (Intel Level), GTMO's most restricted detainees.³²⁴ Detainees classified at Level 5 are "segregated at the direction of the JIG . . . for intelligence gathering purposes."³²⁵ They are "[h]oused in a group on an Intel block . . . for Intel purposes," and they "[r]eceive [r]eward level (1-4) privileges as recommended by JIG."³²⁶

Either JIG or JDOG may diminish or increase the detainees' rewards.³²⁷ JDOG may be directed to increase the level of comfort items a Level 5 Intel-designated detainee receives because "[i]ncreased privileges and rewards result in more cooperative detainee mind-set, providing further opportunity for intelligence exploitation."³²⁸

Level 5 is also home to the Positive Behavior Reward Program which is designed to "supplement the work of the JIG."³²⁹ As JIG works with a detainee, "his conduct will earn him more or less privileges."³³⁰ Only intelligence agents, never regular GTMO personnel, have the power to grant expendable items, such as comfort items, to Level 5 detainees.³³¹ Intelligence personnel gain detainee trust by providing certain privileges not available to them from regular GTMO personnel, such as unshackling a detainee or opening a detainee's viewing door.³³²

The authors of the SOPs viewed the system of rewarding compliance and doling out punishment as an integral part of intelligence. JIG's control over these aspects of prisoner life shows that what seem, at first glance, to be day-to-day operations are actually strategically controlled by intelligence.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.* at 4-20(b)(4).

³²³ *Id.* at 8-7(a).

³²⁴ *Id.* at 8-7(a)(5).

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.* at 8-8(c).

³²⁸ *Id.* at 33-1(b)(4).

³²⁹ *Id.* at 8-9(b).

³³⁰ *Id.*

³³¹ *Id.* at 8-9(a).

³³² *Id.* at 14-12(d), 9-3(f), 9-3(l).

The Unchecked Movement of Intelligence

As with many military operations, GTMO's SOPs strictly regulate both who can move throughout the camp and where those people can go. Intelligence is able to move throughout the camp with much less oversight than detention operations. Intelligence has its own set of Escort Control guards for these purposes.³³³ Escort Control is divided into two separate groups: one controls detainee movements within Camp Delta, while the other controls movement of teams who are not allowed unauthorized access within the camp, such as the ICRC.³³⁴ The first group is divided into Joint Interagency Interrogation Facility (JIIF) escorts, medical escorts, and block transfer escorts.³³⁵ JIIF escorts have the highest priority in the camps.³³⁶

Limited Guard Role

Intelligence's micromanagement reaches even the guards of the camp. Though the guards are part of JDOG, the SOPs require guards to cooperate with intelligence by, among other things, passively collecting information from detainees through their observations.³³⁷ For example, "[t]he guard force is tasked with 'passively' looking for items of intelligence value and reporting it."³³⁸ The "Passive Intelligence Collection" SOPs call for guards to "make mental notes, or if the situation allows, take written notes,"³³⁹ though guards should not "question detainees, other than for clarification of a statement,"³⁴⁰ or "initiate questioning"³⁴¹ unless otherwise directed.

However, while personnel collect intelligence, the SOPs restrict their access to the detainees to core operational requirements, unlike their intelligence counterparts who are allowed unrestricted access. This prevents JDOG personnel from disrupting ongoing individual intelligence operations. For example, "[JDOG] Personnel will only interact with detainees on official business that is essential for mission accomplishment. Personnel will not fraternize with detainees This includes idle chatter and small talk" ³⁴² Even basic detainee hygiene

³³³ *Id.* at 11-4(b)(1).

³³⁴ *Id.* at 11-4(a). The detainees are housed in Camp Delta. *Id.*

³³⁵ *Id.* at 11-4(b)(1)-(3).

³³⁶ The CJDOG establishes the priority of escorts based on mission and available resources. The normal priority for escorts is:

- a. JIIF.
- b. ICRC.
- c. Medical.
- d. Contractor.
- e. Detainee block transfers.

Id. at 11-3(a)-(e).

³³⁷ *Id.* at 6-16.

³³⁸ *Id.* at 6-16(a).

³³⁹ *Id.* at 6-16(c)(5).

³⁴⁰ *Id.* at 6-16(c)(1).

³⁴¹ *Id.* at 6-16(c)(2).

³⁴² *Id.* at 1-7 (a)(7). See also Furlow Interview *supra* note 14 at OIG-INTV 000-559 ("Camp Delta built after Camp X-Ray closed. Divided into different camps: Camp 5 - hard core prisoners, maximum security, Federal Bureau of Investigation most interested in these prisoners; Camp 6 - 200 person, medium and psychiatric; Camp 4 - those prisoners with no intelligence value or terrorist conduct. Camp 4 is a dorm type collective living arrangement.").

comes second to intelligence gathering. For instance, “if a detainee is scheduled to shower and have his laundry exchanged at a time the JIIF needs to do their interrogation, the needs of the JIIF will supersede the detainee shower and laundry exchange.”³⁴³ While the guards are not controlled by Intel, the SOPs indicate that Intel uses them for collection purposes. In addition, the SOPs show that Intel has found a way to be present even in the most basic operations of the camp.

Camp 4 and Intel Blocks

There are four distinct camps inside Camp Delta at Guantanamo.³⁴⁴ Camp 4 opened in February 2003, and was publicly portrayed as a space for compliant detainees.³⁴⁵ These detainees were specifically selected by JIG for detainment in the camp.³⁴⁶ Camp 4’s stated focus is to reinforce good behavior, use rewards to enhance Intel’s efforts, provide incentives for detainees to work with interrogators, and put detainees at ease to provide further opportunity for “intelligence exploitation.”³⁴⁷ Although intelligence works directly in all the camps, Camp 4 is specially designed “to support intelligence-gathering activities from detainees and promote cooperation by providing increased privileges and opportunities for social interaction thereby increasing the desire of other detainees to be in Camp 4.”³⁴⁸ Intelligence also handpicks guards to work in the camp.³⁴⁹ The guards must have special training above and beyond the training required for the other camps.³⁵⁰

Punishment for Secrecy Breaches

The SOPs establish a system wherein JIG controls the flow (or lack thereof) of information, showing that secrecy is of the utmost importance to the operation of GTMO. Intelligence decides what information can be released and what information needs to be kept secret. The importance of maintaining GTMO’s secrets is evidenced by the fact that violations of GTMO SOPs on secrecy “will be promptly reported to the chain of command,” resulting in “UCMJ action under article 92, violation of a general order.”³⁵¹ This may result in dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.³⁵² The SOPs forbid “[d]iscussing classified matters, work related matters or JTF operational matters with anyone who does not have either the appropriate clearance or the need to know said information or in the presence of anyone that does not have the appropriate clearance.”³⁵³ According to one SOP,

³⁴³ 2004 GTMO SOP, *supra* note 66 at 10-7(c).

³⁴⁴ *Id.* 2-2(a).

³⁴⁵ GITMO Photos, U.S. DEPT. OF DEFENSE (Apr. 5, 2006), <http://www.defense.gov/home/features/gitmo/facilities.html> (last accessed Feb. 26, 2013).

³⁴⁶ 2004 GTMO SOP, *supra* note 66 at 33-1(a).

³⁴⁷ *Id.* at 33-1(b) (1)–(4).

³⁴⁸ *Id.* at 33-1(a).

³⁴⁹ *Id.* at 33-2(b).

³⁵⁰ *Id.*

³⁵¹ *Id.* at 1-7(b), 27-6(g).

³⁵² Uniform Code of Military Justice, 10 U.S.C. §§ 801–946 (1950) [hereinafter *U.C.M.J.*]

³⁵³ 2004 GTMO SOP, *supra* note 66 at 27-5(a)(2).

“[m]any JDOG, JIG, and JMG service members have information that could be detrimental to our mission if the media knew of it or detainees became aware of it.”³⁵⁴

All GTMO personnel are forbidden from discussing camp operations, including: detainee movement, any reference to specific detainee interrogations, or “any reference to a detainee’s medical condition including, but not limited, to medical treatment received and given, diagnoses, and status of health.”³⁵⁵ The only exception to the ban on discussing GTMO future missions and special missions was when “specifically directed . . . by JDOG through coordination with JIG personnel.”³⁵⁶ That is, JIG controls what GTMO personnel may divulge when questioned about GTMO. Additionally, guards are prohibited from making “[a]ny reference to specific detainee interrogations or methods of interrogation. This includes talking to other guards or US personnel who do not have a need to know regarding the specific information.”³⁵⁷

The SOPs governing operations at GTMO show that intelligence operates in two different ways. First, intelligence is engaged in big picture operations deciding how detainees should be classified, what personnel can say to outside parties, and keeping separate blocks for interrogation purposes. Second, intelligence is involved in the most basic camp operations, from having its own escorts to using guards for intelligence collection. Intelligence, then, is present everywhere, from the bottom up.

³⁵⁴ *Id.* at 27-6(i).

³⁵⁵ *Id.* at 27-4 (c).

³⁵⁶ *Id.* at 27-6(c)(4).

³⁵⁷ *Id.* at 27-6(f)(3).

Appendix B: An Unacknowledged SAP at GTMO?

Department of Defense SAPs are classified programs created “when absolutely necessary to protect the Nation’s most sensitive . . . information”³⁵⁸ and are approved by the SECDEF or the Deputy SECDEF.³⁵⁹ SAPs are programs established for a specific category of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.³⁶⁰ According to all public sources, there has never been an SAP in GTMO. However, the investigation of one Special Operations Soldier with SAP clearance, present at GTMO as early as 2003, suggests that the DoD did in-fact control a secret interrogation-related SAP in GTMO.

There are three categories of SAPs; “(1) Acquisition, (2) Intelligence, and (3) Operations and Support” and two types of SAPs: “Acknowledged and Unacknowledged.”³⁶¹ An Acknowledged SAP “may be openly recognized or known” though the specific details within the SAP, such as participant’s names, remain classified, and is subject to congressional oversight.³⁶² An Unacknowledged SAP’s entire “existence is protected . . . and the specifics of the program are classified.”³⁶³ Unacknowledged SAP’s are not encumbered by congressional oversight.³⁶⁴

The SECDEF may waive the applicable reporting requirements under Title 10 U.S.C. 119(e) transforming an Unacknowledged SAP into a “Waived-SAP”.³⁶⁵ As a Waived-SAP, Congress is more restricted in its ability to require reports regarding the SAP.³⁶⁶

In an apparent redaction oversight, the Center became aware of a special operations, interrogation-related SAP at GTMO. In 2004, in what we will refer to as the “Prayer Bead Investigation,” a PSYOPs Staff Sergeant at GTMO was charged with larceny of a detainee’s private property, and the resulting CID investigation was later released to the public.³⁶⁷ While most identifying information was redacted, an oversight exposed the SSG’s security clearance: Top Secret SAP.³⁶⁸

³⁵⁸ Directive No. 5205.07, Dept. of Defense 2 (July 1, 2010), *available at* https://www.fas.org/irp/doddir/dod/d5205_07.pdf.

³⁵⁹ *Id.*

³⁶⁰ Executive Order 13292, Further Amendment to Executive Order 12958, As Amended, Classified National Security Information, Sec. 6.1 (kk), Mar. 25, 2003, *available at* <http://www.gpo.gov/fdsys/pkg/WCPD-2003-03-31/pdf/WCPD-2003-03-31-Pg359.pdf> (last accessed Mar. 2, 2013). The authority to create SAPs is vested in “the President, the Secretaries of State, Defense and Energy, and the Director of Central Intelligence, or the principal duty of each.” *Id.*

³⁶¹ Joint Air Force-Army-Navy Manual 6/0: Special Access Program Security Manual – Revision 1 3 (May 29, 2008) [hereinafter *JAFAN 6/0*] (on file with author).

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ CID Report of Investigation – Final (C)/SSI 0260-2004-CID023-67287-7G1A1, U.S. Army Criminal Investigation Command (July 16, 2004), *available at* http://www.thetorturedatabase.org/files/foia_subsite/pdfs/doddoacid006859.pdf [hereinafter *Prayer Bead Investigation*].

³⁶⁸ *Id.* at 33 (page numbers correspond to ACLU numbering). The security clearance reads “TS (SAP)” which stands for Top Secret Special Access Program.

The PSYOPs Staff Sergeant's listed Military Occupation Specialty (MOS) and unit shed light on the SAP's function at GTMO and involvement in interrogation operations. The investigation sheet lists the PSYOPs Staff Sergeant's MOS as 37F.³⁶⁹ MOS 37F stands for Physiological Operations Specialist (PSYOPs specialist), and "[a]s a member of the Army *special operations* community, the *psychological operations specialist* is primarily responsible for the analysis, development and distribution of intelligence used for information and psychological effect."³⁷⁰ Further, the PSYOPs Staff Sergeant was part of A Company, 2nd Battalion, 1st Special Warfare Training Group.³⁷¹ This Unit's mission was:

2nd Battalion: Trains SOF [Special Operations Forces] and other selected personnel in advanced special-operations skills, techniques, tactics and procedures in CONUS. Implements and evaluates associated doctrine, then deploys military training teams worldwide in support of regional combatant commanders and DoD missions.³⁷²

Based on the PSYOPs Staff Sergeant's Top Secret SAP clearance, his or her connections to special operations and intelligence (through PSYOPs and S2), and the lack of public information regarding the existence of an SAP at GTMO, it is apparent that the DoD did control an SAP in GTMO which was likely a Waived (Unacknowledged) Intelligence SAP.

Although it has been difficult to affirmatively uncover SAP programs at GTMO (other than through the Prayer Bead Investigation), the Army Criminal Investigation Command (CID) discussed the existence of an SAP in Iraq relating to interrogation. In 2005, the CID was attempting to investigate reports of assault, cruelty and maltreatment in Abu Garib.³⁷³ In a memorandum regarding this investigation, CID concluded that it was unable to thoroughly investigate the Report of Investigations because the suspects and witnesses were involved in an SAP.³⁷⁴

Further findings of the investigation indicate CID's frustration. CID found that "[n]o effort was made to identify and interview the interrogators and screening personnel" at the time of the incident despite the detainee's "**very** good descriptions" of those involved.³⁷⁵ The CID investigation also found the "lost records" explanation used to be "unacceptable" because "[c]apture reports and interrogation reports do not just sit in a database on a local hard drive."³⁷⁶

³⁶⁹ *Id.*

³⁷⁰ U.S. Army Website: Careers & Jobs: Psychological Operations Specialist (37F), <http://www.goarmy.com/careers-and-jobs/browse-career-and-job-categories/intelligence-and-combat-support/psychological-operations-specialist.html>, (emphasis added) (last accessed Mar. 2, 2013) [hereinafter *Psychological Operations Specialist (37F)*].

³⁷¹ *Id.* ("A Co. 2/ 1 SWTG").

³⁷² SWCS Organization, U.S. Army, available at <http://www.soc.mil/swcs/about.html> (last accessed Mar. 2, 2013).

³⁷³ CID Investigation Iraq, Memorandum to Commander, U.S. Criminal Investigation Command re documenting the transfer of CID Report of Investigations from the 11th MP BN (CID) to Current Opns, Hq's, USACIDC, DOD-044489 (Apr. 8, 2005), available at <http://www.aclu.org/files/projects/foiasearch/pdf/DOD044418.pdf> [hereinafter *CID Investigation Iraq*].

³⁷⁴ *Id.* ("[The CID] has been unable to thoroughly investigate these ROI's [Report of Investigations] due to the suspects and witnesses involvement in Special Access Program's (SAP).").

³⁷⁵ *Id.* at DOD-044494.

³⁷⁶ *Id.*

Because this detainee had a relationship with another high value detainee, the interrogators would have submitted a report “to higher echelons” making it unlikely to be lost.³⁷⁷ Finally, the detainee was captured and detained by Task Force 6-26, a special operations task force stationed out of Fort Bragg.³⁷⁸ CID determined that the investigation did not need to be reopened because “[h]ell, even if we reopened it we wouldn’t get anymore information then (sic) we already have.”³⁷⁹

While there is no direct evidence that GTMO’s interrogation program, as the Center for Worldwide Interrogation, was itself an SAP, there are several interesting similarities which suggest the possibility. The program was an executive order from the Joint Chiefs of Staff and approved by SECDEF Rumsfeld or President Bush. Further, the general in charge of the program in GTMO was given specific marching orders from the President to meet on a weekly basis with the SECDEF personally. This procedure was outside of the chain of command and thereby circumventing the usual reporting structure. Although never identified as an SAP program, is quite possible that GTMO’s interrogation program, as the center for worldwide interrogation, was an unacknowledged intelligence SAP.

³⁷⁷ *Id.*

³⁷⁸ *Id.* at DOD-044496. For information on TF 6-26 beyond the scope of this report, see Eric Schmitt & Carolyn Marshall, Task Force 6-26: Inside Camp Nama; In Secret Unit’s “Black Room,” A Grim Portrait of U.S. Abuse, *NYTIMES*, Mar. 19, 2006, *available at* <http://www.nytimes.com/2006/03/19/international/middleeast/19abuse.html?pagewanted=all> (last accessed Mar. 2, 2013).

³⁷⁹ *CID Investigation Iraq*, *supra* note 373 at DOD-044496.

**Appendix C: A Special Place for Interrogation: Special Operations, Special Missions,
Special Access Programs**

There are a number of groups operating at GTMO for intelligence purposes. These include: DIA, JIG, civilian contractors, special operations, PSYOPs, and the BSCT. Special Operations Forces played a significant role in GTMO interrogations owing to the existence of a PSYOPs detachment, Special Projects Tiger Teams, and Special Mission Units. In addition, a PSYOPs detachment, part of Special Operations Forces, was sent from Fort Bragg to GTMO. PSYOPs personnel were trained in SERE techniques and were involved in interrogation operations at GTMO. Finally, the existence of an SAP related to interrogations, and likely an unacknowledged SAP, can be confirmed at GTMO. This SAP involved a PSYOPs (and therefore special operations) soldier who specialized in SERE techniques.

ICE and Tiger Teams

The Interrogation Control Element (ICE) is run out of the ICE command center which is located within Camp Delta.³⁸⁰ On Dec. 10, 2002, a “JTF GTMO “SERE” Interrogation Standard Operating Procedure” was written by ICE Chief LTC Ted Moss to be signed by himself as well as JIG Commander COL Sanders and Commander of GTMO MG Miller.³⁸¹ JDOG was excluded. While it is unclear whether the SERE SOP was ever signed, there have been instances in GTMO where techniques and procedures occurred without approval, such as the use of EITs on detainee al-Qahtani.³⁸² Therefore, the fact that SERE SOP is unsigned does not foreclose the possibility that the procedures outlined therein were followed.

The SERE SOP details numerous types of interrogation techniques and indicates that some techniques require written approval from the ICE Chief or may only be performed by those interrogators designated by the ICE Chief.³⁸³ It also indicates that a Watch Officer was to monitor the behavior of detainees and interrogators and provide non-verbal or coded messages when the interrogation procedure required adjustment. For example, when the Watch Officer wanted the interrogator to discontinue with the current technique and take a break, he or she would tell the interrogator to “[s]top wasting time with this pig.”³⁸⁴

As of Jan. 15, 2003, LTC Moss was the Commander of ICE.³⁸⁵ During LTC Moss’ tenure as ICE Chief, on March 18, 2003, ICE provided a training brief to the CITF and FBI teams on “the role of ICE and selection process for Camp 4 (intel candidates).”³⁸⁶

³⁸⁰ Rankin Memo, *supra* note 115.

³⁸¹ SERE SOP, *supra* note 157; See *infra* Section II.E. (discussing the SERE SOPs).

³⁸² See *infra* Section III.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ Rankin Memo, *supra* note 115.

³⁸⁶ Memorandum from CIRG for Miami Counterterrorism (Apr. 21, 2003) available at <http://www1.umn.edu/humanrts/OathBetrayed/FBI%204446-4448.pdf> [hereinafter *Miami Counterterrorism Memo*]; See *Testimony of a Former Interrogation Control Element Chief*, *supra* note 160 (indicating LTC Moss’ tenure). SFC Sessions was the ICE Operations Chief and Capt. Weis was the ICE Operations Officer at this time.

Interrogations in GTMO are conducted in teams known as “Tiger Teams” and serve within ICE.³⁸⁷ According to the “Tiger Team Standard Operating Procedure (SOP) for the JTF GTMO Joint Intelligence Group (JIG) Interrogation Control Element (ICE)”, the term “Tiger Team” is defined as: “Intelligence exploitation teams consisting primarily of an Analyst and Interrogator who continuously work together during the Battle Rhythm Cycle.”³⁸⁸ Implemented at GTMO beginning in May of 2002 by the military and FBI,³⁸⁹ the teams originally consisted of “an FBI agent, an analyst, a contract linguist, two CIFT investigators, and a military intelligence interrogator.”³⁹⁰ According to the Tiger Team SOP “[t]his mission has legal and political issues that may lead to interrogators being called to testify, keeping the number of documents with interrogation information to a minimum can minimize certain legal issues.”³⁹¹

The Tiger Teams would conduct two detainee debriefings each day and every agency that participated would provide an individual report.³⁹² The FBI found the teams to be successful, as the FBI member of the Tiger Team was typically the most experience member and therefore the FBI felt it was in control of the teams.³⁹³ This changed in the Fall of 2002, when the FBI stopped participating in the Tiger Teams due to “disagreements [that] arose between the FBI and military intelligence over interrogation tactics.”³⁹⁴

When MG Miller “GITMO-ized” Iraq and Afghanistan, he brought with him three teams: a Synchronization Team, an Interrogation Operations Team, and a Detention Operations Team.³⁹⁵ The Synchronization Team included: a Former JTF-GTMO Joint Interrogation Group Dir., Former JTF-GTMO ICE Chief, Former JTF-GTMO CTC Chief, Former JTF-GTMO Analysis Chief, Former JTF-GTMO Staff Judge Advocate, Information Technology Chief, and Former JTF-GTMO Crim. Invest. Task Force Chief.³⁹⁶ The Interrogation Operations Team included: a Former JTF-GTMO ICE Chief, Former GTMO Saudi Team Chief, Central Asia Team Chief, Central Asia Team Analyst, Saudi Team Noncommissioned Officer-in-Charge, Saudi Team Analyst, Special Projects Interrogator, and Special Projects Analyst.³⁹⁷ Finally, the Detention Operations Team included: a Camp Delta Superintendent and Camp Delta Company Commander.³⁹⁸

³⁸⁷ The Tiger Team SOP is classified. Portions, however, are cited within the Affidavit of Lt. Commander William C. Kuebler to the Supreme Court in *Al Odah v. United States*. Aff. Of Lt. Cmdr. William C. Kuebler, Khaled A.F. Al Odah v. United States, No. 06-1196 available at <http://www.scotusblog.com/wp-content/uploads/2008/06/kuebler-affidavit-6-8-08.pdf> (last accessed Mar. 2, 2013) [hereinafter *Affidavit of Lt. Cmdr. Kuebler*].

³⁸⁸ *Id.*; See also MG Miller Report: Assessment of FoF Counterterrorism Interrogation and Detention Operations in Iraq (U) 4 [hereinafter *Miller Report*]. Miller recommends this format for Iraq/Afghanistan. *Id.*

³⁸⁹ *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, US Dept. of Justice, Office of the Inspector General 34 (May 2008) available at <http://www.justice.gov/oig/special/s0805/final.pdf> [hereinafter *A Review of FBI's Involvement*].

³⁹⁰ *Id.*

³⁹¹ *Affidavit of Lt. Cmdr. Kuebler*, *supra* note 387.

³⁹² *A Review of the FBI's Involvement*, *supra* note 389.

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Miller Report*, *supra* note 388, at 9.

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

While at GTMO 2LT [REDACTED] worked as a Mental Health Specialist³⁹⁹ assigned to work for ICE.⁴⁰⁰ She indicates that she attended the “Tiger Team University” at Fort Huachuca for a three-week refresher course.⁴⁰¹ She describes the Tiger Team University as having two phases:

The first phase, which was one week long, provided an overview of the Arabic culture and the Islamic terrorist network. The second phase, which lasted two weeks, was intended to provide [sic] the interrogators with specific scenarios and reinforce the approaches that were both approved and successful JTF-GTMO.⁴⁰²

She reports that several of the instructors at the University had personally interrogated detainees at GTMO in the past.⁴⁰³ According to MG Miller, individuals at Tiger Team University are trained to “incorporate databases including DIMS, CT-link web-safe, CIA Source, Harmony, and Coliseum in interrogation planning and execution.”⁴⁰⁴

Tiger Teams at GTMO received additional training outside of the Tiger Team Academy. At some point between January 2003 and May 2, 2005⁴⁰⁵, GTMO Tiger Teams received Joint Analyst and Interrogator Collaboration Course (Intelligence in Support of Combating Terrorism) training. This training program was created in response to a U.S. Naval training request to “develop intelligence professionals, specifically interrogators and analysts, who could effectively obtain information from hardened, resistant, and deceptive detainees held at Guantanamo Bay, Cuba by defeating their resistance techniques to interrogation.”⁴⁰⁶ The training specifically prepared Tiger Teams for interrogations at GTMO.⁴⁰⁷ The analysts and interrogators that comprised the Tiger Teams were taught how to work together to exploit any intelligence a detainee may have.⁴⁰⁸

Special Operations, PSYOPs, and Interrogations

Special Operations Forces played a significant role in GTMO interrogations owing to the existence of a PSYOPs detachment and Special Projects Tiger Teams. The PSYOPs detachment at GTMO is a part of Special Operations Forces⁴⁰⁹ and came from Fort Bragg, North Carolina.⁴¹⁰

³⁹⁹ *BSCT SOP*, *supra* note 96, at 2 (“BSCT NCOIC (BSCT3): Mental Health Specialist, USA, 91X. Provides consultation and interrogation support to the ICE. Assesses camp climate and provides feedback to BSCT1 on issues and trends.”).

⁴⁰⁰ *Schmidt-Furlow Enclosures*, *supra* note 4, at 843 (“2LT [REDACTED] was stationed at GTMO from Feb. 14, 2003 to Nov. 22, 2003.”).

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Miller Report*, *supra* note 388, at 5.

⁴⁰⁵ GTMO Tiger Teams received “JAICC (ISCT)” training, which was only offered from January 2003 until May 2, 2005, when the name was changed to the Enhanced Analysis and Interrogation Training. *Humint Training – Joint Center of Excellence (HT-JCOE) Military Intelligence Professional Bulletin* “The Joint Analysis and Interrogator Collaboration Course,” PB 34-10-4 (Oct.–Dec. 2010) available at http://www.fas.org/irp/agency/army/mipb/2010_04.pdf (last accessed Mar. 3, 2013).

⁴⁰⁶ *Id.* at 32.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* at 32–33.

⁴⁰⁹ *SOF Reference Manual*, *supra* note 108.

⁴¹⁰ *Prayer Bead Investigation*, *supra* note 367.

PSYOPs personnel were SERE trained and sent to GTMO to help with interrogations.⁴¹¹ According to the Army, “[a]s a member of the Army special operations community, the psychological operations specialist is primarily responsible for the analysis, development and distribution of intelligence used for information and psychological effect.”⁴¹² BSCT personnel at GTMO supported PSYOPs by assisting in “the development of psychological plans and consultation on the utilization of products developed by Psychological Operations Team.”⁴¹³ PSYOPs Personnel also provided training to the FBI and the Criminal Investigative Task Force, and possibly others, on “the strategic plan to increase detainee cooperation during the interrogation process and to enhance force protection within the camp.”⁴¹⁴

Finally, Special Operations Forces maintained a Special Missions cell block⁴¹⁵ demonstrating that Special Operations Forces SMUs were present at GTMO. According to one detainee’s medical records (ISN 588), he was being held in a Special Mission cell.⁴¹⁶ The 2003 Camp Delta SOPs also reference exchanging detainee blankets on a Special Missions block.⁴¹⁷ Finally, the 2004 SOPs refer to Camp 4 as containing Special Missions.⁴¹⁸

⁴¹¹ *Id.*

⁴¹² *Psychological Operations Specialist (37F)*, *supra* note 370.

⁴¹³ BSCT SOP 2004, *supra* note 96, at 2.

⁴¹⁴ *Miami Counterterrorism Memo*, *supra* note 386.

⁴¹⁵ We are unsure if the entire area of Camp 4 was reserved for special missions.

⁴¹⁶ GTMO Joint Medical Group Records for ISN 588, 1050 (Dec. 22, 2005).

⁴¹⁷ 2004 GTMO SOP, *supra* note 66 at 6-10.

⁴¹⁸ *Id.* at 33-2(b).

Appendix D: Structure of the Behavioral Science Consultation Team

The mission of the BSCT at GTMO placed the BSCT in a support role for ICE, PSYOPs, JDOG and possibly others.⁴¹⁹ The BSCT Chief reports to the Director of JIG and coordinates with the Commander of JDOG.⁴²⁰ The BSCT's mission essential tasks include providing consultations in support of the intelligence gathering mission, monitoring of interrogations, providing consultation of the safety of detainees, including potential psychological risk factors, monitoring behavioral trends of the detainee population for use in interrogation and detention operations, and providing training on behavioral, psychological, cultural and religion issues for certain JIG and JDOG personnel, among other things.⁴²¹

Although the BSCT members are psychologists, they do not interact with their subjects or participate in interrogations. The BSCT SOPs clarify that the BSCT has no clinical role whatsoever.⁴²² The SOPs state that BSCT does not provide mental health evaluations or treatment to detainees or JTF-GTMO personnel, but rather, that JMG provides all medical treatment, including mental health evaluation and treatment for both detainees and JTF-GTMO personnel.⁴²³ The BSCT members did have knowledge of detainee medical conditions, however, in order to “protect the welfare of the detainee,”⁴²⁴ the psychologists involved with BSCT needed to “know if the detainee had a major medical condition.”⁴²⁵ The BSCT team was entitled to use that information to prevent any potentially harmful interrogation techniques.⁴²⁶

The BSCT's importance within the structure of interrogations is demonstrated by statements of those who worked with BSCT personnel. An FBI agent who worked with the BSCT several times found them to be “a great resource.”⁴²⁷ He went further to say that “[t]hey know everything thats (sic) going on with each detainee, who they're talking to, who the leaders are, ect. (sic) I've encouraged the interview teams to meet with them prior to doing their interviews.”⁴²⁸

Furthermore, when MG Miller evaluated the structure of the intelligence gathering facilities in Iraq and Afghanistan, he cited the lack of the BSCT as a problem that needed to be addressed.⁴²⁹ It was his recommendation that a BSCT be provided to support interrogation operations in Iraq and Afghanistan.⁴³⁰ This indicates that MG Miller also found the BSCT to be a beneficial resource for interrogations and intelligence gathering.

⁴¹⁹ *BSCT SOP*, *supra* note 96, at 1–2.

⁴²⁰ *Id.* at 1.

⁴²¹ *Id.*

⁴²² *Id.* at 7.

⁴²³ *Id.*

⁴²⁴ *James Email*, *supra* note 112.

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ Email from FBI Agent DOJFBI-003596, *available at*

<http://www.aclu.org/files/projects/foiasearch/pdf/DOJFBI003596.pdf> (last accessed Mar. 3, 2013).

⁴²⁸ *Id.*

⁴²⁹ *Miller Report*, *supra* note 388.

⁴³⁰ *Id.*

Appendix E: Federal Agencies, Military Divisions, and Civilians Involved with Intelligence Gathering and Dissemination from Guantanamo Bay Detainees

- Central Intelligence Agency
 - Central Interrogation Program⁴³¹
- Civilians Contracted by SOUTHCOM
 - Interrogators
 - Former law enforcement officers⁴³²
 - Former military intelligence⁴³³
 - Translators⁴³⁴
- Department of Defense
 - Counterintelligence Field Activity, Behavioral Sciences Directorate⁴³⁵
 - Criminal Investigation Taskforce^{*436}
 - Defense Intelligence Agency, Defense HUMINT Service⁴³⁷
- Federal Bureau of Investigation
 - Counterterrorism Center⁴³⁸
 - Behavioral Analysis Unit⁴³⁹
 - Counterterrorism Operational Response Section⁴⁴⁰
 - Critical Incident Response Group⁴⁴¹
 - Military Liaison and Detainee Unit⁴⁴²
- United States Air Force
 - Office of Special Investigations⁴⁴³
- United States Army
 - 85th Medical Detachment⁴⁴⁴

⁴³¹ *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Related to the Central Intelligence Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists*, U.S. Dep't of Justice, Office of Prof'l Responsibility 145 available at <http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf> [hereinafter *Investigation into the OLC's Memo*].

⁴³² *Church Report*, Office of the United States Secretary of Defense, 315 (original document page numbers) available at http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/church_report_3.pdf.

⁴³³ *Id.*

⁴³⁴ *FBI in Military Zones Report*, U.S. Dep't of Justice, Office of the Inspector Gen., OIG-INTV-000398 available at http://www.aclu.org/files/pdfs/natsec/dojfb20100514/doj_fbirelease_05142010.pdf.

⁴³⁵ Walter Pincus, *Pentagon's Intelligence Authority Widens*, THE WASHINGTON POST, Dec. 19, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/18/AR2005121801006.html>.

⁴³⁶ *FBI in Military Zones Report*, *supra* note 434, at OIG-INTV-000373.

⁴³⁷ *Support to the War on Terrorism and Homeland Security*, Central Intelligence Agency, https://www.cia.gov/library/reports/archived-reports-1/Ann_Rpt_2002/swtandhs.html (last accessed Mar. 3, 2013).

⁴³⁸ *Miami Counterterrorism Memo*, *supra* note 386, at 3.

⁴³⁹ *FBI in Military Zones Report*, *supra* note 434, at OIG-INTV-000072.

⁴⁴⁰ *Report to the National Commission on Terrorist Attacks upon the United States*, Federal Bureau of Investigation 22, http://www.fbi.gov/stats-services/publications/fbi_ct_911com_0404.pdf (last accessed Mar. 3, 2013).

⁴⁴¹ *FBI in Military Zones Report*, *supra* note 434, at OIG-INTV-000075.

⁴⁴² *A Review of FBI's Involvement*, *supra* note 389, at 58.

⁴⁴³ *FBI in Military Zones Report*, *supra* note 434, at OIG-INTV-000073.

⁴⁴⁴ *Army Regulation 15-6 Investigation into Alleged Detainee Abuse at Joint Task Force – Guantanamo (Schmidt-Furlow Report)*, Exhibit 63, at 1, available at

Seton Hall Law Center for Policy and Research

- Army Intelligence⁴⁴⁵
- Criminal Investigation Division⁴⁴⁶
- United States Navy
 - United States Naval Criminal Investigative Service⁴⁴⁷

* Note: The CITF includes, *inter alia*, the U.S. Air Force Office of Special Investigations, the U.S. Army Criminal Investigation Division, and the U.S. Naval Criminal Investigative Service. Each of these military divisions are implicated individually in addition to the CITF's role in intelligence gathering and dissemination from Guantanamo Bay detainees, in U.S. Government documents. The specific mentioning of these military divisions outside of references to collective CITF activity suggests that these military divisions are operating under their own auspices at Guantanamo Bay, in addition to operating under the auspices of the CITF. Therefore, they are included individually.

http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/Exhibit_63_to_AR15_6GTMO_Investigation.pdf (last accessed Mar. 3, 2013).

⁴⁴⁵ *Investigation into the OLC's Memo*, *supra* note 431, at 70.

⁴⁴⁶ *FBI in Military Zones Report*, *supra* note 434, at OIG-INTV-000399.

⁴⁴⁷ *Id.*, at OIG-INTV-000374.

Appendix F: JTF GTMO "SERE" Management Interrogation Standard Operating Procedure

TAB 16

03/21/2007 12:28 18797:1438

45414

PAGE 02

THIS DOCUMENT IS UNCLASSIFIED AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER SECTION 552
FOR OFFICIAL USE ONLY JTF GTMO SERE SOP 18 DECEMBER 2002

All references to SERE will be removed as per Lt Col

JTF GTMO "SERE" INTERROGATION STANDARD OPERATING PROCEDURE

Subj: GUIDELINES FOR EMPLOYING "SERE" TECHNIQUES DURING DETAINEE INTERROGATIONS

Ref: (A) PABO DETACHMENT BRUNSWICK INSTRUCTION 3305.3D

1. Purpose. This SOP document promulgates procedures to be followed by JTF-GTMO personnel engaged in interrogation operations on detained persons. The primary basis for 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 cannot be used to break real detainees during interrogation operations.

The basis for this document is the SOP used at the U.S. Navy SERE (Survival, Evasion, Assistance, and Escape) school in Brunswick, Maine and is defined by reference (a).

Note that all tactics are strictly non-lethal.

STRICT COMPLIANCE WITH THE GUIDELINES SET FORTH IN THIS DOCUMENT IS MANDATORY!

2. Training. All interrogators will undergo training by certified SERE instructors prior to being approved for use of any of the techniques described in this document. Training will be controlled and maintained in full by the Interrogation Control Element (ICE) Chief.

3. Scope. Applicable to designated military and civilian interrogators assigned to Joint Task Force - Guantanamo Bay, Cuba.

Approved: LT COL TED K. HOLES
ICE CHIEF
Approved: COL [Name]
JTF-GTMO
Approved: MR [Name]
COMBATING GENERAL JTF GTMO

Coercive management techniques
CONFIDENTIAL
copy 2

3376 OFFICE
8306 HM
Dear
Section
spe

THIS DOCUMENT IS UNCLASSIFIED AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER 5 U.S.C. 552

2007-1870

7468

Appendix G: Counter Resistance Strategy Meeting Minutes

TAB 7

Counter Resistance Strategy Meeting Minutes

Page 2 of 5

-----Original Message-----

From: Thomas Blaine

Sent: Thursday, October 24, 2002 7:57 PM

To: McCahon Sam; Johnson Scott; Fallon Mark

Subject: FW: Counter Resistance Strategy Meeting Minutes

Sam,

Very interesting reading on how detainees are being treated for info.

Scott, Mark,

FYI

Blaine

Counter Resistance Strategy Meeting Minutes

Persons in Attendance:

COL Cummings, LTC Phifer, CDR Bridges, LTC Beaver, MAJ Burney, MAJ Leso, Dave Becker, John Fredman, 1LT Seck, SPC Pimentel

The following notes were taken during the aforementioned meeting at 1340 on October 2, 2002. All questions and comments have been paraphrased:

BSCT Description of SERE Psych Training (MAJ Burney and MAJ Leso)

- Identify trained resisters
 - Al Qaeda Training
- Methods to overcome resistance
 - Rapport building (approach proven to yield positive results)
 - Friendly approach (approach proven to yield positive results)
 - Fear Based Approaches are unreliable, ineffective in almost all cases
- What's more effective than fear based strategies are camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees.
 - Environment should foster dependence and compliance

LTC Phifer Harsh techniques used on our service members have worked and will work on some, what about those?

MAJ Leso Force is risky, and may be ineffective due to the detainees' frame of reference. They are used to seeing much more barbaric treatment.

Becker Agreed

→ At this point a discussion about ISN 63 ensued, recalling how he has responded to certain types of deprivation and psychological stressors. After short discussion the BSCT continued to address the overall manipulation of the detainees' environment.

BSCT continued:

- Psychological stressors are extremely effective (ie, sleep deprivation, withholding food, isolation, loss of time)

COL Cummings We can't do sleep deprivation
LTC Beaver Yes, we can - with approval.

- Disrupting the normal camp operations is vital. We need to create an environment of "controlled chaos"

LTC Beaver We may need to curb the harsher operations while ICRC is around. It is better not to expose them to any controversial techniques. We must have the support of the DOD.

Becker We have had many reports from Bagram about sleep deprivation being used.

LTC Beaver True, but officially it is not happening. It is not being reported officially. The ICRC is a serious concern. They will be in and out, scrutinizing our operations, unless they are displeased and decide to protest and leave. This would draw a lot of negative attention.

COL Cummings The new PSYOP plan has been passed up the chain
LTC Beaver It's at J3 at SOUTHCOM.

Fredman 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 ICRC has made a big deal about certain detainees, the DOD has "moved" them away from the attention of ICRC. Upon questioning from the ICRC about their whereabouts, the DOD's response has repeatedly been that the detainee merited no status under the Geneva Convention. The CIA has employed aggressive techniques on less than a handful of suspects since 9/11.

Under the Torture Convention, torture has been prohibited by international law, but the language of the statutes is written vaguely. Severe mental and physical pain is prohibited. The mental part is explained as poorly as the physical. Severe physical pain described as anything causing permanent damage to major organs or body parts. Mental torture described as anything leading to permanent, profound damage to the senses or personality. It is basically subject to perception. If the detainee dies you're doing it wrong. So far, the techniques we have addressed have not proven to produce these types of results, which in a way challenges what the BSCT paper says about not being able to prove whether these techniques will lead to permanent damage. Everything on the BSCT white paper is legal from a civilian standpoint. [Any questions of severe weather or temperature conditions should be deferred to medical staff.] Any of the techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents. The CIA operates without military intervention. When the CIA has wanted to use more aggressive techniques in the past, the FBI has pulled their personnel from theatre. In those rare instances, aggressive techniques have proven very helpful.

LTC Beaver We will need documentation to protect us

Fredman Yes, if someone dies while aggressive techniques are being used, regardless of cause of death, the backlash of attention would be severely detrimental. Everything must be approved and documented.

Becker LEA personnel will not participate in harsh techniques

LTC Beaver There is no legal reason why LEA personnel cannot participate in these operations

→At this point a discussion about whether or not to video tape the aggressive sessions, or interrogations at all ensued.

Becker Videotapes are subject to too much scrutiny in court. We don't want the LEA people in aggressive sessions anyway.

LTC Beaver LEA choice not to participate in these types of interrogations is more ethical and moral as opposed to legal.

Fredman The videotaping of even totally legal techniques will look "ugly".

Becker (Agreed)

Fredman The Torture Convention prohibits torture and cruel, inhumane and degrading treatment. The US did not sign up on the second part, because of the 8th amendment (cruel and unusual punishment), but we did sign the part about torture. This gives us more license to use more controversial techniques.

LTC Beaver Does SERE employ the "wet towel" technique?

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

MAJ Burney Whether or not significant stress occurs lies in the eye of the beholder. The burden of proof is the big issue. It is very difficult to disprove someone else's PTSD.

Fredman These techniques need involvement from interrogators, psych, medical, legal, etc.

Becker Would we get blanket approval or would it be case by case?

Fredman The CIA makes the call internally on most of the types of techniques found in the BSCT paper, and this discussion. Significantly harsh techniques are approved through the DOJ.

LTC Phifer Who approves ours? The CG? SOUTHCOM CG?

Fredman Does the Geneva Convention apply? The CIA rallied for it not to.

LTC Phifer Can we get DOJ opinion about these topics on paper?

LTC Beaver Will it go from DOJ to DOD?

LTC Phifer Can we get to see a CIA request to use advanced aggressive techniques?

Fredman Yes, but we can't provide you with a copy. You will probably be able to look at it.

An example of a different perspective on torture is Turkey. In Turkey they say that interrogation at all, or anything you do to that results in the subject betraying his comrades is torture.

LTC Beaver In the BSCT paper it says something about "imminent threat of death", ...

Fredman The threat of death is also subject to scrutiny, and should be handled on a case by case basis. Mock executions don't work as well

as friendly approaches, like letting someone write a letter home, or providing them with an extra book.

Becker I like the part about ambient noise.

→ At this point a discussion about ways to manipulate the environment ensued, and the following ideas were offered:

- Medical visits should be scheduled randomly, rather than on a set system
- Let detainee rest just long enough to fall asleep and wake him up about every thirty minutes and tell him it's time to pray again
- More meals per day induce loss of time
- Truth serum; even though it may not actually work, it does have a placebo effect.

Meeting ended at 1450.

Classification: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Appendix H: Email from Linda Watt to Gregory Suchan

UNCLASSIFIED

Φ GTMO

CWG PM-Director

RELEASED IN FULL

From: Suchan, Gregory M
Sent: Tuesday, February 19, 2002 4:48 PM
To: (DoD) Watt, Linda; Suchan, Gregory M
Cc: CWG_PM-Coordinator; Chesches, Martin; finneyjd@state.smil.mil; CoalitionWG_PM; PM-AS-Staff-Assistants; Blaschke, Brent E; Bloomfield, Lincoln P Jr; Schmeelk, Peter G; Bell, Randolph M(Main State); Cagan, Debra(Main State Rm 4720); Carragher, James J(Main State Room 3234); Sprow, Gregory B(Main State Room 6913); Larocco, James A(Main State); Gray, Gordon(Main State)
Subject: RE: establishment of jtf-170 at Guantanamo

P35

Linda: Thanks. I haven't seen the ExOrd but I am sure our staff assistants and the task force will get it up soon. As for foreign access (at GTMO, at least), I think the policy is pretty much locked in at senior levels and is unlikely to change without a really good reason. I will have to see what the cable says about the mobile teams -- so far at least, we are talking only about detainees in Afghanistan and Guantanamo and we have a pattern that seems to have achieved some grudging acceptance. Other topics that you mention are part of the broader policy that S/WCI is working on, but in which we all have a high degree of interest.

-----Original Message-----

From: Watt, Linda, MS (H) [SMTP:WattL@hq.southcom.smil.mil]
Sent: Tuesday, February 19, 2002 4:00 PM
To: suchangm@state.sgov.gov
Cc: 1TFQ@state.sgov.gov; chesheml@centcom.smil.mil; finneyjd@state.smil.mil
Subject: establishment of jtf-170 at Guantanamo

greg - i have just reviewed the execute orders from cjcs and cincsouth for the establishment of the new jtf-170 at Guantanamo. these were released over the weekend and provide for the transfer of the operations of the joint interagency interrogation function from the current jtf-160 to the new jtf-170, which will be commanded by mg dunlavey. jtf-170 will also be responsible for the worldwide management of interrogation of suspected terrorists detained in support of us military operations, so this is a significant expansion of the current mandate. supporting law enforcement and potential war crimes proceedings is also part of the mission.

i see a number of state dept equities in play here:

- foreign government access
- consultations w/ host govts on deployments of the "mobile detainee review and screening teams"
- repatriations - who, why, when, where, and how
- coordination with other govts on war crimes policies
- public diplomacy/information ops
- public affairs
- myriad legal questions

the cjcs exord called for a position in the jtf of an "osd special assistant for policy matters". state dept liaison with this person will need to be both formal and informal.

the list above is not meant to be all-inclusive; it is based on my first reading. i suggest that you ask the working group and/or whoever the right people are to take a look at those exords (state was on distribution) to think about what we may need to do to stay in the loop and to make sure foreign policy concerns are dealt with early and often. i will do my best, but think this may get beyond my capacity to cover effectively along with all the other balls that are in the air, especially when a new cinc gets on board and we hit the road even more often than we do now. even helping me to define what will be done at the washington level in existing or new channels vs what i need to worry about down here would be a great help.

all the best,

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: WILLIAM E LANDFAIR
 DATE/CASE ID: 05 OCT 2004 200303827

UNCLASSIFIED

UNCLASSIFIED

linda
Linda E. Watt
Foreign Policy Advisor
U. S. Southern Command
(305) 437-1012

UNCLASSIFIED²

DOS-000024