Senate Armed Services Committee Inquiry into
The Treatment of Detainees in U.S. Custody

Executive Summary submitted to Department of Defense
(November 11, 2008)

Accompanying Levin-McCain Statement
<http://levin.senate.gov/newsroom/release.cfm?id=305235>

Senate Armed Services Committee Hearing:
The Origins of Aggressive Interrogation Techniques
Part I of the Committee’s Inquiry into the Treatment of Detainees in U.S. Custody
(June 17, 2008)
<http://levin.senate.gov/senate/statement.cfm?id=299242>

Opening Statement by Senator Carl Levin, Senate Armed Services Committee Hearing
on The Authorization of SERE Techniques for Interrogations in Iraq
Part II of the Committee’s Inquiry into the Treatment of Detainees in U.S. Custody
(September 25, 2008)
<http://levin.senate.gov/newsroom/release.cfm?id=303575>

Author’s Note: This key U.S. Senate Committee is composed of a like number of both Republicans and Democrats. An edited version of its Executive Summary and Conclusions are provided below.

During President Bush’s last week in office, when interviewed by CNN’s Larry King, President Bush reaffirmed the following: (1) his primary obligation was to protect the American people; (2) there had been no further attacks on U.S. soil since 9–11; (3) the U.S. did not torture; and (4) he relied on governmental legal authorities to conduct all features of the War on Terror.

The symbol “(U)” refers to portions of this report that are Unclassified. The remainder are blacked out.

EXECUTIVE SUMMARY

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

– General David Petraeus

[As Senator McCain, a Viet Nam P.O.W. for over five years, said on another occasion: “It’s not about who they are. It’s about who we are.”]

(U) The collection of timely and accurate intelligence is critical to the safety of U.S. personnel deployed abroad and to the security of the American people here at home. The methods by which we elicit intelligence information from detainees in our custody affect not only the reliability of that information, but our broader efforts to win hearts and minds and attract allies to our side.
(U) The abuse of detainees in U.S. custody cannot simply be attributed to the actions of “a few bad apples” acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees. Those efforts damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority. This report is a product of the Committee’s inquiry into how those unfortunate results came about.

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

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

(U) In December 2001, more than a month before the President signed his memorandum, the Department of Defense (DoD) General Counsel’s Office had already solicited information on detainee “exploitation” from the Joint Personnel Recovery Agency (JPRA), an agency whose expertise was in training American personnel to withstand interrogation techniques considered illegal under the Geneva Conventions. (U) JPRA is the DoD agency that oversees military Survival Evasion Resistance and Escape (SERE) training. During the resistance phase of SERE training, U.S. military personnel are exposed to physical and psychological pressures (SERE techniques) designed to simulate conditions to which they might be subject if taken prisoner by enemies that did not abide by the Geneva Conventions. As one JPRA instructor explained, SERE training is “based on illegal exploitation (under the rules listed in the 1949 Geneva Convention Relative to the Treatment of Prisoners of War) of prisoners over the last 50 years.” The techniques used in SERE school, based, in part, on Chinese Communist techniques used during the Korean war to elicit false confessions, include stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures. It can also include face and body slaps and until recently, for some who attended the Navy’s SERE school, it included waterboarding.

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Department of Justice Redefines Torture (U)

(U) On August 1, 2002, just a week after JPRA provided the DoD General Counsel’s office the list of SERE techniques and the memo on the psychological effects of SERE training, the Department of Justice’s Office of Legal Counsel (OLC) issued two legal opinions. … One opinion … on standards of conduct in interrogation required under the federal torture statute … concluded:

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

(U) The other OLC opinion issued on August 1, 2002 … responded to a request from the CIA, addressed the legality of specific interrogation tactics. While the full list of techniques remains classified, a publicly released CIA document indicates that waterboarding was among those analyzed and approved.

(U) On October 11, 2002, Major General Michael Dunlavey, the Commander of JTF-170 at Guantanamo Bay, sent a memo … requesting authority to use aggressive interrogation techniques. Several of the techniques requested were similar to techniques used by JPRA and the military services in SERE training, including stress positions, exploitation of detainee fears (such as fear of dogs), removal of clothing, hooding, deprivation of light and sound, and the so-called wet towel treatment or the waterboard. Some of the techniques were even referred to as “those used in U.S. military interrogation resistance training.” Lieutenant Colonel Diane Beaver, GTMO’s Staff Judge Advocate wrote an analysis justifying the legality of the techniques….

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

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

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

(U) Captain Dalton, who was the Chairman’s Legal Counsel, said that she had her own concerns with the GTMO request and directed her staff to initiate a thorough legal and policy review of the techniques. That review, however, was cut short.
Secretary of Defense Rumsfeld Approves Aggressive Techniques (U)

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

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

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

(U) On January 15, 2003, the same day he rescinded authority for GTMO to use aggressive techniques, Secretary Rumsfeld directed the establishment of a “Working Group” to review interrogation techniques. For the next few months senior military and civilian lawyers tried, without success, to have their concerns about the legality of aggressive techniques reflected in the Working Group’s report. Their arguments were rejected in favor of a legal opinion from the Department of Justice’s Office of Legal Counsel’s (OLC) John Yoo [who subsequently became a law professor at UC-Berkeley].

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

Aggressive Techniques Authorized in Afghanistan and Iraq (U)

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

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

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

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

SENATE ARMED SERVICES COMMITTEE CONCLUSIONS

Conclusions on SERE Training Techniques and Interrogations

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

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

Conclusions on Senior Official Consideration of SERE Techniques for Interrogations


**Conclusion 6:** The Central Intelligence Agency’s (CIA) interrogation program included at least one SERE training technique, waterboarding. Senior Administration lawyers, including Alberto Gonzales, Counsel to the President, and David Addington, Counsel to the Vice President, were consulted on the development of legal analysis of CIA interrogation techniques. Legal opinions legal obligations under U.S. anti-torture laws and determined the legality of CIA interrogation techniques. Those OLC opinions distorted the meaning and intent of anti-torture laws, rationalized the abuse of detainees in U.S. custody and influenced Department of Defense determinations as to what interrogation techniques were legal for use during interrogations conducted by U.S. military personnel.

**Conclusions on GTMO’s Request for Aggressive Techniques**

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

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

**Conclusion 13:** Secretary of Defense Donald Rumsfeld’s authorization of aggressive interrogation techniques for use at Guantanamo Bay was a direct cause of detainee abuse there. Secretary Rumsfeld’s December 2, 2002 approval … of … most of the techniques … influenced and contributed to the use of abusive techniques, including military working dogs, forced nudity, and stress positions, in Afghanistan and Iraq.

**Conclusions on Interrogations in Iraq and Afghanistan**

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

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