UNITED STATES SENATE

COMMITTEE ON ARMED SERVICES

There will be a meeting of the Committee on

ARMED SERVICES

Tuesday, June 17, 2008

9:30 AM

Room SD-106, Dirksen Senate Office Building

OPEN

To receive testimony on the origins of aggressive interrogation techniques: Part I of the Committee's inquiry into the treatment of detainees in U.S. custody

PANEL 1

Mr. Richard L. Shiffrin

Former Deputy General Counsel for Intelligence
Department of Defense

Lieutenant Colonel Daniel J. Baumgartner, Jr., USAF (Ret.)

Former Chief of Staff
Joint Personnel Recovery Agency

Dr. Jerald F. Ogrisseg

Former Chief Psychology Services
336th Training Group
United States Air Force Survival School

PANEL 2

Mr. Alberto J. Mora

Former General Counsel
United States Navy

Rear Admiral Jane G. Dalton, USN (Ret.)

Former Legal Advisor to the Chairman
Joint Chiefs of Staff

Lieutenant Colonel Diane E. Beaver, USA (Ret.)

Former Staff Judge Advocate
Joint Task Force 170/JTF Guantanamo Bay

PANEL 3

Mr. William J. Haynes II

Former General Counsel
Department of Defense

Tuesday

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Mr. Richard L. Shiffrin
Former Deputy General Counsel for Intelligence
Department of Defense

NO ELECTRONIC TESTIMONY SUBMITTED

WRITTEN TESTIMONY OF

DANIEL J. BAUMGARTNER JR.
LT COL (RETIRED) UNITED STATES AIR FORCE

BEFORE

THE UNITED STATES SENATE, COMMITTEE ON ARMED SERVICES

JUNE 17, 2008

Chairman Levin, Senator McCain, and distinguished members of the Committee. On 27 May 2008, I was requested to voluntarily testify at today's hearing to discuss issues relating to the Committee's inquiry into the treatment of detainees in U.S. custody. I was informed the hearing would explore the development, consideration, and approval of interrogation techniques for use with detainees in U.S. custody. My testimony today is in response to that request.

In August and September 2007 I was questioned by Committee staff members with respect to my knowledge, while at my final military assignment as the Chief of Staff, Joint Personnel Recovery Agency (JPRA), of the matters addressed in the Committee's May 27, 2008 letter. In accordance with the Committee's specific request, my written testimony today addresses my recollection of: (a) my communications with the Office of the General Counsel (OGC) of the Department of Defense (DoD) relative to [interrogation] techniques for use with detainees in U.S. custody; (b) my communication with JPRA personnel and the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command that resulted from requests made by the OGC [relative to interrogation techniques for use with detainees in U.S. custody]; (c) and my knowledge of any assistance to interrogators provided by JPRA personnel, [relative to interrogation techniques for use with detainees in U.S. custody].

Before I address these specific questions, it is helpful to provide some background information about my military career from 1979 until my retirement in May 2003 (my final day of duty was March 19, 2003).

I graduated from the United States Air Force (USAF) Academy in 1979 and spent my first 11 years in the Air Force flying T-37, C-130, and T-38 aircraft. In 1990 I was assigned to the USAF Survival School. From then until my retirement ceremony in March 2003, I served in a variety of capacities involving the personnel recovery mission. My final assignment was as Chief of Staff to the JPRA at their headquarters at Ft Belvoir, Virginia, from the Fall of 1998 until my last day of active duty on March 19, 2003. As the Chief of Staff, I was the manager of internal processes, overseer of internal staff work as the chief "staff officer," and staff director. While I was aware of many things involving the JPRA, I was not privy to everything. JPRA directors had the authority and ability to go directly to the commander and deputy commander.

The JPRA is the U.S. Joint Forces Command's Office of Primary Responsibility (OPR) for the DoD personnel recovery mission and executes the Commander, United States Joint Forces Command (USJFCOM), Executive Agent duties with respect to the personnel recovery mission. The JPRA shapes the planning, preparation, and execution of personnel recovery for the DoD to enable commanders, individuals, recovery forces, and supporting organizations to effectively execute their personnel recovery responsibilities.

"Personnel recovery" is the sum of military, civil, and diplomatic efforts to prepare for and execute the recovery and reintegration of captured, detained, isolated, or missing personnel from uncertain or hostile environments and denied areas. "Personnel" for purposes of the personal recovery mission include United States military members, DoD civilian employees, or contractor service employees who are separated from their

organization while participating in a U.S. sponsored military activity or mission outside the U.S., and are, or may be, in a situation where they may be isolated, beleaguered, detained, captured or having to evade, resist, or escape.

a. My communications with the Office of the General Counsel (OGC) of the Department of Defense relative to [interrogation] techniques:

My recollection of my first communication with OGC relative to techniques was with Mr. Richard Shiffrin in July 2002. However, during my two interviews with Committee staff members last year I was shown documents that indicated I had some communication with Mr. Shiffrin related to this matter in approximately December 2001. Although I do not specifically recall Mr. Shiffrin's request to the JPRA for information in late 2001, my previous interviews with Committee staff members and review of documents connected with Mr. Shiffrin's December 2001 request have confirmed to me the JPRA, at that time, provided Mr. Shiffrin information related to this Committee's inquiry. From what I reviewed last year with Committee staff members, the information involved the exploitation process and historical information on captivity and lessons learned. But, until today, I have never met Mr. Shiffrin.

With respect to Mr. Shiffrin's July 2002 request, he contacted the JPRA and asked for information on interrogation resistance techniques used against U.S. prisoners of war. I asked my Commander, Colonel Moulton, for approval to support the request, which he granted. I then passed the request for support to our higher headquarters through USJFCOM J3 for approval. After USJFCOM approved supporting the request, I asked our resident JPRA experts for assistance in obtaining the information Mr. Shiffrin

requested. My response memorandum to Mr. Shiffrin included a couple of papers on exploitation, and interrogation and lesson plans used to train our U.S. personnel (i.e., potential isolated personnel) in the psychological aspects of detention, exploitation-threats and pressures, methods of interrogation, and resistance to interrogations. After having the package delivered I believe there were some phone calls between Mr. Shiffrin and me to clarify parts of the package (I don't recall what the specific questions were, but essentially they involved follow-up questions about the material I sent).

A few days later I received another phone call from Mr. Shiffrin requesting information on the use of physical pressures, which, after notifying Colonel Moulton, I provided. The information on the use of physical pressures in our personal recovery training consisted of a memorandum with information compiled from JPRA experts and one paper from an Air Force SERE (Survival, Evasion, Resistance, and Escape) school psychologist, Captain (Dr.) Jerry Ogrisseg, on the effects of resistance training. I followed-up with one or two phone calls to make sure I had provided the information Mr. Shiffrin requested. I do not recall any further communications with Mr. Shiffrin or other DoD, OGC personnel about these issues after the July 2002 requests for information.

b. My communication with Joint Personnel Recovery Agency (JPRA) personnel and the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command that resulted from requests made by the OGC

As noted, in response to Mr. Shiffrin's requests for information I spoke with the then-Chief of Psychology Services at the Department of the Air Force's Air Education and Training Command, Dr. Jerry Ogrisseg, about information his office had on the

psychological effects on trainees of resistance training. That communication resulted in our compiling and sending to Mr. Shriffrin the second memorandum noted above with some attachments.

c. My knowledge of any assistance to interrogators provided by JPRA personnel

The JPRA commander prohibited JPRA personnel from becoming involved in actual interrogations of detainees. As far as I know, JPRA personnel did not participate in detainee interviews at any time prior to my retirement.

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

I also provided a more limited briefing (about 30 minutes) to the Criminal Investigation Task Force located at Fort Belvoir, which worked under the Army. JPRA also briefed one other agency. These organizations were also briefed on resistance techniques, questioning techniques, and general information on how exploitation works.

Army Lieutenant Colonel (Dr.) Morgan Banks, the Director of Psychological Services, at Ft Bragg, North Carolina, also asked the JPRA for support. I recall the request was to travel to Ft Bragg to provide briefings to Army psychologists and other

mental health personnel, which occurred in September 2002. I coordinated the support in terms of scheduling and obligating the organization to respond to Dr. Banks' request. The briefings were designed to assist the Army in training Army Psychologists and other mental health personnel on what it would mean to be assigned to duty at Guantanamo Bay. To my best recollection, the course had instruction in exploitation, oversight and treatment of detainees and staff in a captivity environment, and what the professional ethical issues might be for clinical psychologists operating in a captivity environment.

I thank the Committee for allowing me to provide this written testimony in response to the Committee's request and look forward to answering your questions.

Statement of

Dr. Jerald Ogrisseg
Joint Personnel Recovery Agency
United States Joint Forces Command

Before the Senate Committee on Armed Services

17 June 2008

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you today. My testimony will address my July 2002 communications with the Chief of Staff of the Joint Personnel Recovery Agency (JPRA) relating to interrogations and resistance training techniques, my July 24, 2002 memorandum "Psychological Effects of Resistance Training," and the role of Survival, Evasion, Resistance, and Escape (SERE) psychologists, and the use of physical and psychological pressures in resistance training for U.S. soldiers.

First, I want to provide some personal background information. I received my Bachelor's of Science degree from The Ohio State University and my Masters and Ph.D. degrees in clinical psychology from Bowling Green State University in Ohio. I joined the Air Force in 1995. I went through residency training in psychology at Wilford Hall Medical Center in San Antonio, Texas. I then served as a clinical psychologist in Air Force Behavioral Health clinics at Lackland Air Force Base and at Onizuka Air Station. In those positions, I provided a wide range of basic psychological services. I then served as the Survival, Evasion, Resistance, and Escape (SERE) Psychologist for the United States Air Force Survival School at Fairchild Air Force Base, Washington from 4 February 1999 to 28 July 2002. There I was the Commander's representative for all psychological aspects of training. My primary purpose was to safeguard the integrity of training by providing risk management oversight of training activities, and to conduct research to address questions of training effectiveness and training risk. I separated

from active duty service at the grade of Major in 2002 to accept a civilian position with the Joint Personnel Recovery Agency (JPRA). I serve currently as the SERE Research Psychologist for the JPRA where I have been assigned since 29 July 2002. In that capacity, my job is to conduct research, operational release handling of recovered, returned, and repatriated US personnel, recommend policies in these areas, and provide expert knowledge in human decision-making, behavioral adaptation, learning in stressful environments, learned helplessness, and learning to enhance human resiliency. I also Chair an international research panel on Survival Psychology through the Human Resources and Performance Group (HUM) of The Technical Cooperation Program (TTCP) which includes fellow survival psychologists from Australia, Canada, New Zealand, the United Kingdom, and the United States. This panel was recognized by each of those countries with a team achievement award for creating and demonstrating the effectiveness of a selection program for Resistance Training instructors which served to select appropriate people to become instructors and thereby mitigate training risks.

Mr. Chairman, with regards to my July 2002 communications with then Lt Col Dan Baumgartner, the then Chief of Staff of JPRA, my recollection is that Lt Col Baumgartner called me directly, probably on the same day that I generated my 24 July 2002 memorandum that I referenced earlier. He indicated that he was getting asked "from above" about the psychological effects of resistance training. I had no idea who was asking Lt Col Baumgartner "from above" and did not ask him to clarify who was asking. I recall reminding Lt Col Baumgartner in general terms about program evaluation data I'd presented in May of 2002 at the SERE Psychology Conference. These data, which were collected on Air Force survival students at different points of time during training, indicated that training significantly improves students confidence in their ability to adhere to the Code of Conduct.

Then, I recall LtCol Baumgartner asking me if I thought training was harmful to students. This question and my responses to it formed the basis of my 24 July 2002 memorandum to Lt Col Baumgartner, which is the best record of the conversation that we had. In general terms, I indicated that a very small percentage of students (4.3%) had adverse psychological reactions to our training, but we (the survival psychology staff) were able to re-motivate almost all of those having adverse reactions (96.8%) to complete training. Thus, less than .2% of the roughly 14,000 students were unable to complete training due to psychological problems which arose during training. The exact numbers I cited in the memorandum were retrieved from the annual risk reports we kept. In order to ensure that our program was safe and effective, I also told Lt Col Baumgartner that students received three debriefings during training, two of which were conducted by the Psychology Services staff, and that the other was a detailed, thorough operational debriefing. These debriefings normalized the students' performance and reactions during training, and reinforced the training objectives to increase their skill and confidence. As an additional point on this question, I indicated that very few complaints were made following training. These indicators combined led me to conclude that long-term negative effects of training are likely minimal. I did caveat, however, that we did not routinely survey students in the years following training to confirm this conclusion.

Finally, as indicated in my 24 July 2002 memorandum, Lt Col Baumgartner asked me if I'd ever seen the waterboard used, and what I thought of it. I told him that I had seen it used while observing Navy training the previous year, and that I would never recommend using it in training. He asked me why and if I thought it was physically dangerous. I responded that I didn't see anyone getting physically injured when I observed it, and as stated in my memorandum, the Navy was applying it to medically screened trainees with medical personnel

immediately available to monitor and intervene if necessary. However, that wasn't the point, as psychologically the waterboard produced capitulation and compliance with instructor demands 100% of the time. During debriefings following training, students who had experienced the waterboard expressed extreme avoidance attitudes such as a likelihood to further comply with any demands made of them if brought near the waterboard again. I told Lt Col Baumgartner that waterboarding was completely inconsistent with the stress inoculation paradigm of training that we used, and was more indicative of a practice that produces learned helplessness – a training result we tried strenuously to avoid. The final area I recall Lt Col Baumgartner asking me about were my thoughts on using the waterboard against the enemy. I asked responded by asking, "wouldn't that be illegal?" He replied that some people were asking from above about the utility of using this technique against the enemy for the same reasons I wouldn't use it in training. I replied that I wouldn't go down that path because, aside from being illegal, it was a completely different arena that we in the Survival School didn't know anything about. When we concluded the talk, Lt Col Baumgartner asked if I would write him a memo reflecting what we'd just discussed regarding the psychological effects of training so he could include it with other materials he was sending up. He also asked if I would comment on both the physical and psychological effects of the waterboard. I replied that I would, and drafted the memo.

Mr. Chairman, with regards to the role of SERE psychologists, as I mentioned earlier, the intent is to provide expert knowledge and research to advise the Commander in order to prevent in-role behavioral drift or role creep within the training, prevent moral disengagement of staff while providing training, and maintain the effectiveness of training within a stress inoculation-based approach. These aims are accomplished through: psychologically screening instructors; training instructors and out-of-role supervisors on indicators of behavioral drift and moral

disengagement, and associated preventative actions; immediately conducting incident reviews following any adverse training events; and advising on administrative or re-training actions when indicated.

Mr. Chairman, physical and psychological pressures are used in resistance training for several reasons. Historically, coercive pressures have been used against US soldiers in numerous captivity situations. Including simulated physical and psychological stresses to our training adds more realism and effectiveness to the training. Additionally, in the realm of the training science world, simulated physical and psychological stresses would be recognized during the task analysis as some of the conditions under which the resistance skills must be applied. The overall goal is to instill good habits in trainees and the ability to think clearly and solve problems during repeated exposure to stressful situations to ensure that performance does not degrade under stress.

In SERE resistance training, physical and psychological pressures consist of contact with a student, as well as use of threats and ploys that are designed to test the students' resistance. The pressures are designed to cause some physical and emotional discomfort. These pressures are definitely not designed to cause injury or anything other than minor, temporary irritation. All pressures are reviewed by medical and psychological staff before they are used to ensure that a good margin of physical and psychological safety exists when they are used, and to limit their use on personnel with pre-existing medical and psychological concerns. Additionally, when physical pressures are used, the use is continuously monitored by multiple levels of out of role school personnel to ensure that the pressures are used within established limits. The psychological purpose of physical and psychological pressures at the Air Force Survival School

was always to enhance student decision-making, resistance, confidence, resiliency, and stress inoculation, and not to break the will of the students or to teach them helplessness.

In conclusion Mr. Chairman, let me emphasize again that the purpose of our training of U.S. military personnel is to increase their level of confidence that they can survive captivity and interrogation situations, comply with the Code of Conduct, and return with the least amount of physical and psychological damage. Our basic concept for this training is that if a service member has met the types of interrogation conditions even once before, they will begin to be familiar with them and thus more able to cope with an otherwise extremely stressful and confusing situation. Although there are many sacrifices and harrowing circumstances that our soldiers, marines, sailors, and airmen are called to task to face, I can think of none more amazing and confusing than being held captive by your enemy. I believe we have a moral obligation to provide our personnel this training. Through our training, we prepare our nation's best for the worst, so that if they fall into the hands of the enemy, they can see that situation through the lens of an experience that they've already dealt with successfully– providing them with hope and courage to survive and return with honor.

Thank you for the opportunity to speak with you today. I look forward to answering any questions you may have.

Statement of

Alberto J. Mora

Senate Committee on Armed Services
Hearing on the Treatment of Detainees in U.S. Custody

June 17, 2008

Chairman Levin, Senator McCain, and Members of the Committee, it is a pleasure and an honor to appear before you today and to have been asked to testify on the treatment of detainees in U.S. custody. I regard these hearings as critical both to a better understanding of the interrogation policies and practices adopted by our government since 9/11 and – perhaps of even greater importance – to a better understanding of the costs and consequences to our Nation if we were to continue to employ cruelty in the interrogation of detainees.

Two prefatory comments are in order.

First, I wish to thank the Members and the Committee staff for their many courtesies to me during my tenure as General Counsel of the Department of the Navy. Both during my confirmation process and while serving as Navy General Counsel, I witnessed the Committee unfailingly live up to its well-earned reputation for civility, diligence, professionalism, and non-partisanship as it attended to the legislative affairs of our Nation's defense.

Second, in my brief testimony today I intend not to recount my record on interrogation while serving as Navy General Counsel, but to summarize briefly my views on the policy consequences of the use of cruelty as a weapon of war. My official conduct on this issue is already a matter of record inasmuch as I prepared and submitted a

comprehensive account of these matters to the Navy Inspector General in 2004, following the Abu Ghraib scandal. This memorandum is in the public domain and may be accessed on the Web.[1] Similarly, I wish to note that I have spoken at greater length in various venues on the issues I will touch on today, and I draw the Committee's attention to my speech to the American Bar Association in February of this year.[2] I ask that both of these documents be included as part of the record of these proceedings.

I.

Mr. Chairman, our Nation's policy decision to use so-called "harsh" interrogation techniques during the War on Terror was a mistake of massive proportions. It damaged and continues to damage our Nation in ways that appear never to have been considered or imagined by its architects and supporters, whose policy focus seems to have been narrowly confined to the four corners of the interrogation room. This interrogation policy – which may aptly be labeled a "policy of cruelty" – violated our founding values, our constitutional system and the fabric of our laws, our over-arching foreign policy interests, and our national security. The net effect of this policy of cruelty has been to weaken our defenses, not to strengthen them, and has been greatly contrary to our national interest.

Before turning to this damage, it may be useful to draw some of the basic legal distinctions pertinent to interrogation. The choice of the adjectives "harsh" or "enhanced" to describe these interrogation techniques is euphemistic and misleading. The more precise legal term is "cruel." Many of the "counter-resistance techniques" authorized for use at Guantanamo in December 2002 constitute "cruel, inhuman, or

[1] "Statement for the Record: Office Of General Counsel Involvement in Interrogation Issues," (July 7, 2004)(May be accessed at www.newyorker.com/images/pdfs/moramemo.pdf).
[2] The speech was given at the ABA's Center for Human Rights Fourth Annual House of Delegates Luncheon. The text is located at www.abavideonews.org/ABA496/media/pdf/navycounsel_OMKall.pdf.

degrading" treatment that could, depending on their application, easily cross the threshold of torture.

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

Except in egregious cases, gauging the precise legal category of abuse inflicted on a detainee is difficult because it depends on specific facts, including the techniques used and the medical and psychological impact. In general, however, it is beyond dispute that techniques constituting cruel treatment were authorized and applied. Tragically, credible reporting also makes it appear probable that some detainees were tortured. Certainly, the admission that waterboarding – a classic and reviled method of torture – was applied to some detainees creates the presumption that those detainees so interrogated were tortured.

II.

The United States was founded on the principle that every person – not just each citizen – possesses certain inalienable rights that no government, including our own, may violate. Among these rights is unquestionably the right to be free from cruel punishment or treatment, as is evidenced in part by the clear language of the Eighth Amendment and

the constitutional jurisprudence of the Fifth and Fourteenth Amendments. If we can apply the policy of cruelty to detainees, it is only because our Founders were wrong about the scope of inalienable rights. With the adoption of this policy our founding values necessarily begin to be redefined and our constitutional structure and the fabric of our legal system start to erode.

III.

Because the international legal system, the legal system of many countries, and the international human rights system are all largely designed to protect human dignity, the decision of the United States to adopt cruelty has had devastating foreign policy consequences. For most, perhaps all, of our traditional allies, the cruel treatment of detainees is a criminal act. As these nations came to recognize the dimensions of our policy of cruelty, political fissures between us and them began to emerge because none of them would follow our lead into the swamp of legalized abuse, as we should not have wished them to. These fissures only deepened as awareness grew about the effect of our policies on fundamental human rights principles, on the Geneva Conventions, on the Nuremberg precedents, and on the incidence of prisoner abuse worldwide. Respect and political support for the United States and its polices decreased sharply abroad.

IV.

These adverse foreign policy consequences would inevitably damage our national security strategy and our operational effectiveness in the War on Terror. Our ability to build and sustain the broad alliance required to fight the war was compromised. International cooperation, including in the military, intelligence, and law enforcements arenas, diminished as foreign officials became concerned that assisting the U.S. in

detainee matters could constitute aiding and abetting criminal conduct in their own countries. As the difficulties of Prime Ministers Tony Blair and Jose Maria Aznar demonstrated, seemingly every European politician who sought to ally his country with the U.S. effort on the War on Terror incurred a political penalty.

All of these factors contributed to the difficulties our nation has experienced in forging the strongest possible coalition in the War on Terror. But the damage to our national security also occurred down at the tactical or operational level. I'll cite four examples:

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

Second, allied nations reportedly hesitated on occasion to participate in combat operations if there was the possibility that, as a result, individuals captured during the operation could be abused by U.S. or other forces.

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

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

V.

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

I thank you and the Committee for your laudatory focus on this issue and for the invitation to appear today.

STATEMENT OF RDML JANE G. DALTON, JAGC, USN (RET.)
BEFORE THE COMMITTEE ON ARMED SERVICES, U.S. SENATE

JUNE 17, 2008

Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to appear before the Committee today to discuss the matter of detainee interrogation policy.

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

Those challenges called on lawyers at the Department, as never before, to provide legal advice to enable our nation's leaders to aggressively meet the unprecedented threat to homeland security without compromising our adherence to the rule of law and the United States' international treaty obligations. That we undertook this task at a time of war, and amidst a continuous stream of credible intelligence pointing to a substantial and resilient terrorist threat, made our work as lawyers all the more difficult.

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

I understand the importance of Congressional oversight of the Executive Branch in our constitutional system, and I appreciate the sensitivity of the matters under review. I hope that the Committee will fulfill its oversight role with wisdom, perspective, and fairness.

Thank you again for the opportunity to contribute to today's hearing, and I look forward to answering your questions.

STATEMENT

Lieutenant Colonel (Retired) Diane E. Beaver, USA

June 17th, 2008

The United States Senate Armed Services Committee

Mr. Chairmen and committee members, I appear today voluntarily and in my private capacity. Although I am currently an employee of the Department of Defense, I do not speak today on its behalf. I am here to testify truthfully and completely regarding my knowledge of the development and implementation of interrogation policies and practices at Guantanamo Bay, Cuba, from June 2002 to June 2003.

As the Staff Judge Advocate for the detention facility at Guantanamo Bay, I wrote a legal opinion in October 2002. In it, I concluded that certain aggressive interrogation techniques, if appropriately reviewed, controlled, and monitored, were lawful. Since the Department of Defense publicly released my opinion in 2004, it has received considerable attention and scrutiny. I have been vilified by some because of it, and discounted and forgotten by many others. Regardless, I accept full responsibility for my legal opinion. It was based on my own independent research and analysis. It represents the best work I could do under the constraints and circumstances I faced at the time. No one improperly influenced me to write this opinion or -- to my knowledge -- even attempted to do so. I tried to consult experts and superiors on the content of the opinion prior to issuing it, but received no feedback. I do not say that to shift blame. As I said, the blame for any error in that opinion is mine and mine alone.

I cannot, however, accept responsibility for what happened to my legal opinion after I properly submitted it to my chain of command. I fully expected that it would be carefully reviewed by legal and policy experts at the highest levels before a decision was reached. I did not expect that my opinion, as a Lieutenant Colonel in the Army Judge Advocate General's Corps, would become the final word on interrogation policies and practices within the Department of Defense. For me, such a result was simply not foreseeable. Perhaps I was somewhat naïve, but I did not expect to be the only lawyer issuing a written opinion on this monumentally important issue. In hindsight, I cannot help but conclude that others chose not to write on this issue to avoid being linked to it. That was not an option for me. My commander was responsible for detention and interrogation operations for the most dangerous group of terrorists the world has ever seen. The specter of another catastrophic attack on the American people loomed large in our thoughts, and haunted our dreams. We knew that accurate, actionable intelligence was necessary to prevent another such attack. We did our jobs knowing that if we failed, the American people would pay a terrible price.

I have repeatedly been asked whether I was pressured to write my October 2002 legal opinion. I felt a great deal of pressure, as did all of us at the detention facility. I felt the pressure of knowing that thousands of innocent lives might be lost if we got it wrong. I knew that many honest, decent Americans would condemn our actions if we did not balance our efforts to protect them with due respect for the rule of law. I believed at the time, and still do, that such a balance could be reached -- if the interrogations were strictly reviewed, controlled, and monitored. My legal opinion was not a "blank check" authorizing unlimited interrogations. Throughout the opinion, I emphasized the need for medical, psychiatric, and legal reviews to be conducted prior to the approval of each and every interrogation plan. My judge advocates and I were intent on

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

I close this statement as I began it, by accepting responsibility. I reached my legal conclusions after careful analysis and at all times acted in good faith. I discussed my ideas openly with my colleagues and encouraged full debate. Some of my critics chose not to participate in these discussions. Had they, their concerns and reservations would have received fair consideration. That my colleagues and I openly discussed these issues should not be surprising. The American people, including many legal experts, were having similar conversations at homes, schools, and work places across the Nation.

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

Thank you.

Diane E. Beaver, Lieutenant Colonel (Retired), USA

Tuesday

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Mr. William J. Haynes II
Former General Counsel
Department of Defense

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