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OCA 2007-00193  
11 April 2007

MEMORANDUM FOR: Director Central Intelligence  
FROM: Christopher J. Walker, Director  
SUBJECT: Information for 12 April SSCI Hearing.

Here is the information that you requested:

1. A catalogue of CIA written Congressional Notifications since 2001 regarding CIA renditions, detentions and interrogations. (Attachment 1)

2. A list of all Members and Staff briefed on CIA Interrogation program. (Attachment 2)

- Total Members and Staff briefed on Interrogation program (no EIT discussion) = (88)
- Total Members and Staff briefed on Interrogation program (including EITs) = (68)

3. A list of all Members and Staff briefed on CIA Rendition program 2001-present. (Attachment 3).

4. List of current SSCI information requests to CIA. (Attachment 4)

[REDACTED]  
Christopher J. Walker

Attachment(s):

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SUBJECT: 12 April 2007 Hearing

DCI/OCA [REDACTED]

11 April 2007

[REDACTED] 12 April 2007 hearing

OCA 2007-00193

Distribution:

DD/CIA  
ADD/CIA  
AGC  
DAC without attachments  
DD/OCA  
OCA/COS  
D/OCA Chron

CLASSIFIED  
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Attachment 1

DATE DELIVERED	CONGRESSIONAL NOTIFICATION TITLE
05/15/01	
10/03/01	(S/ [redacted]) Delegation of Authority
11/27/01	
3/13/02	
04/15/02	(C/ [redacted]) Capture of Abu Zubaydah
05/22/02	
06/25/02	(S/ [redacted]) Arrest of Jose Padilla
06/25/02	
09/25/02	(TS/ [redacted]) Successful Raids Against al-Qa'ida in Pakistan
11/22/02	(TS/ [redacted]) Key al-Qa'ida Operative al-Nashiri in Custody
06/27/03	(S/ [redacted]) Death of Detainee in Afghanistan
11/13/03	
01/29/04	
05/12/04	(S/ [redacted]) Recent steps taken to investigate activities at Abu Gharib prison in Baghdad and related matters
05/26/04	
06/24/04	
07/07/04	

[redacted]

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DATE DELIVERED	CONGRESSIONAL NOTIFICATION TITLE
07/14/04	
08/25/04	
11/04/04	
01/19/05	
03/21/05	
04/01/05	
	Detention History, Claims of Links to Iraq, and Recantations
04/06/05	
05/20/05	
08/23/05	
09/01/05	
03/22/06	
10/06/05	
10/17/06	

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DATE DELIVERED	CONGRESSIONAL NOTIFICATION TITLE
11/30/06	
12/08/06	(S/ [REDACTED]) Accountability Review
12/08/06	
12/20/06	
02/06/07	
02/22/07	
03/21/07	

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Interrogation Briefings to the Hill

Date	Subject	Committee	Members
24-Apr-2002	Ongoing interrogations of Abu Zubaydah	HPSCI	Douglas Bereuter Leonard Boswell Richard Burr Michael Castle Gary Condit Peter Hoekstra Nancy Pelosi Silvestre Reyes
24-Apr-2002	Discussion of debriefing of Abu Zubaydah and references to techniques	SSCI	Chairman Bob Graham Evan Bayh Mike Dewine Jon Kyl John Rockefeller Richard Shelby Fred Thompson
30-Jul-2002		SSCI	
7-Aug-2002	Mention of EITs to include examples	SSCI	
20-Nov-2002		SSCI	
4-Dec-2002	Interrogation of Bin al-Shbh and	HPSCI	
4-Sep-2002	EITs	HPSCI	Chairman Goss Ranking Member Harman
9-Sep-2002	EITs	SSCI	Chairman Graham Vice Chairman Shelby
27-Sep-2002	EITs	SSCI	Chairman Graham Vice Chairman Shelby

Attachment 2

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Interrogation Briefings to the Hill

Date	Subject	Committee	Members
4-Feb-2003	EITs	HPSCI	Chairman Goss Ranking Member Harman
4-Feb-2003	Detailed briefing on EITs	SSCI	Chairman Roberts
5-Feb-2003	Detailee Interrogation Activities	HPSCI	Chairman Goss Ranking Member Harman
10-Feb-2003		HPSCI	
27-Feb-2003		SSCI	
11-Jul-2003		SSCI	
Summer 2003	EITs	HPSCI	Chairman Goss Ranking Member Harman
		SSCI	Chairman Roberts Vice Chairman Rockefeller
4-Sep-2003	EITs	HPSCI	Chairman Goss Ranking Member Harman
		SSCI	Chairman Roberts Vice Chairman Rockefeller
4-Sep-2003	CTC Interrogation Programs	HPSCI	Chairman Goss Ranking Member Harman
27-Oct-2003		SSCI	
31-Oct-2003		HAC/DEF	
26-Jan-2004		SSCI	
28-Jan-2004		HPSCI	Chairman Goss Ranking Member Harman
9-Mar-2004		SFRC	Joseph Biden Richard Lugar

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Interrogation Briefings to the Hill			
Date	Subject	Committee	Members
11-May-2004		HAC/DEF	None
4-Jun-2004	vague	SAC	None
	discussion of techniques	SAC/DEF	None
13-Jul-2004	EITs	HPSCI	Chairman Goss Ranking Member Harman
15-Jul-2004		Leadership	Sen. Bill Frist
15-Jul-2004	IG Report on CTC Program	SSCI	Chairman Roberts Vice Chairman Rockefeller
6-Aug-2004	Provided general overview of renditions, detention and interrogation	SGAC	
25-Jan-2005	EITs	HPSCI	Chairman Hoekstra Ranking Member Harman
15-Feb-2005	Mr. Holt	HPSCI	Leonard Boswell Randy Cunningham JoAnni Davis Jane Harman Alcee Hastings Peter Hoekstra Rush Holt Ray Lahood John McHugh Rick Renzi C.A. Ruppertsberger Mac Thornberry Todd Tiahrt John Tierney Heather Wilson
7-Mar-2005	questioned when is rendition useful.		
7-Mar-2005	EITs	SSCI	Chairman Roberts Vice Chairman Rockefeller

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Interrogation Briefings to the Hill

Date	Subject	Committee	Members
8-Mar-2005	EITs	SSCI	Chairman Roberts Vice Chairman Rockefeller
		HPSCI	Chairman Goss
10-Mar-2005		HPSCI	
16-Mar-2005		HPSCI	Chairman Hoekstra Rep. Jane Harman
17-Mar-2005	Open Hearing - Discussion of Renditions, Interrogations, detainees, and prisoner abuse	SASC	Sen. Hillary Clinton Sen. John Comyn Sen. Mark Dayton Sen. James Inhofe Sen. Edward Kennedy Sen. Carl Levin Sen. Joseph Lieberman Sen. John McCain Sen. Benjamin Nelson Sen. Bill Nelson Sen. Pat Roberts Sen. Jeff Sessions Sen. James Talent Sen. John Thune Sen. John Wamre
17-Mar-2005		SSCI	
18-Apr-2005		HPSCI	
7-Jun-2005		SSCI	
30-Jun-2005		SSCI	Senator John Rockefeller

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Interrogation Briefings to the Hill

Date	Subject	Committee	Members
1-Jul-2005		HPSCI	Chairman Hoekstra Speaker Dennis Hastert
14-Oct-2005		SSCI	
14-Oct-2005		SSCI	
18-Oct-2005	EITs	SAC	Senator Stevens Senator Cochran
31-Oct-2005		HPSCI	Rep. Mac Thornberry
late Oct-2005	EITs	SASC	Senator McCain
1-Nov-2005	EITs	Senate	Majority Leader Frist
1-Nov-2005	Detainee Program, no EITs	HPSCI	
8-Nov-2005	EITs	HASC	Chairman Hunter
8-Nov-2005	EITs	HPSCI	Chairman Hoekstra
18-Nov-2006		HPSCI	Rep. Mike Rogers Chairman Hoekstra
4-Apr-2005	Detainee Program, no EITs	Senate	Majority Leader Frist

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Interrogation Briefings to the Hill

Date	Subject	Committee	Members
19-Apr-2005	Detainee Program, no EITs	HPSCI	Mac Thornberry
			Bud Cramer
12-Jan-2006		HPSCI	
23-Jan-2006		Senate	Senator Comyn
2-Feb-2006	Discussed history of program, number of detainees, rendition interrogations, regulations, and legal issues	HPSCI	
7-Feb-2006	Discussion w/IG about investigations into rendition, detainee, and interrogation practices	HPSCI	
15-Feb-2006	Program history, description of facilities, philosophy and mechanics of interrogation planning, threshold for admission, and value of intelligence	HPSCI	Robert Cramer Ranking Member Harman Rick Renzi Mike Rogers Dutch Ruppersberger Todd Tiahrt
7-Mar-2006	Program history, description of facilities, philosophy and mechanics of interrogation planning, threshold for admission, and value of intelligence	SSCI	
15-Mar-2006	Status of program, suspension of EITs, value of intelligence, DTA, need for new legislation	SSCI	Chairman Roberts Vice Chairman Rockefeller Evan Bayh Christopher Bond Saxby Chambliss Russell Feingold Dianne Feinstein Chuck Hagel Carl Levin Trent Lott Barbara Mikulski John Warner

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Interrogation Briefings to the Hill

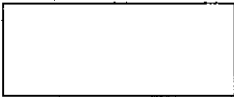
Date	Subject	Committee	Members
31-Mar-2006		HPSCI	
31-Mar-2006	Discussion of legal issues	HPSCI	
12-Apr-2006		HPSCI	
25-Apr-2006	Detainee Program, no EITs	HPSCI	
2-May-2006	IG Reports; implementation of IG recommendations	HPSCI	
8-May-2006		SSCI	
6-Jun-2006		HPSCI	
7-Jun-2006	CTC Detainee Program	SSCI	Chairman Roberts
8-Jun-2006	CTC Detainee Program	HPSCI	Chairman Hoekstra Ranking Member Harman
11-Jul-2006	CTC Detainee Program	SSCI	Chairman Roberts Vice Chairman Rockefeller
17-Jul-2006	CTC Detainee Program	Senate	Majority Leader Frist
18-Jul-2006	CTC Detainee Program	HPSCI	Hearing
6-Sep-2006	Full Detainee Program, including EITs	Senate Leadership	Senators Frist and Reid
6-Sep-2006	Full Detainee Program, including EITs	HPSCI	Rep. Harman
6-Sep-2006	Full Detainee Program, including 13 EITs	SSCI	Full SSCI



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Interrogation Briefings to the Hill			
Date	Subject	Committee	Members
6-Sep-2006	Full Detainee Program, including 13 EITs	HPSCI	(Wyden only no show) Full HPSCI
19-Sep-2006	Full Detainee Program, including 13 EITs	House	Reps. Young and Murtha Murtha did not stay for EIT
16-Nov-2006		SSCI	Full SSCI
16-Nov-2006		HPSCI	Full HPSCI
19-Dec-2006	Detainee Program	HPSCI	Rep. Reyes
14 Feb 2007	Renditions Hearing	SSCI	Full Committee
14 Mar 2007	RDI Briefing, including EITs	HPSCI	Full Committee
23-Mar-2007	including EITs	SSCI	
9-Apr-2007	including EITs	SSCI	



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# SECRET BRIEFINGS TO HILL

Date	Subject	Committee	Members
14 March 2001		HPSCI	Douglas Bereuter Richard Burr Saxby Chambliss James Gibbons Jane Harman Alcee Hastings Peter Hoekstra Asa Hutchinson Norman Sisisky
28 March 2001		SSCI	Richard Shelby Evan Bayh John Edwards Bob Graham Jon Kyl Richard Lugar Pat Roberts John Rockefeller Ron Wyden
9 May 2001		HPSCI	Sanford Bishop James Gibbons Alcee Hastings Nancy Pelosi Collin Peterson Douglas Bereuter Gary Condit Tim Roemer

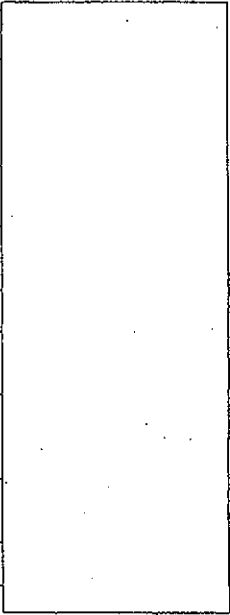
[REDACTED] BRIEFINGS TO HILL

Date	Subject	Committee	Members
15 Mar 2002		SSCI	
19 Mar 2006		HPSCI	Tim Roemer
19 Jul 2002		SSCI	
25 Jul 2002		SSCI	
30-Jul-2002		SSCI	
30 Jul 2002			
2 Aug 2002		SSCI	
5 Sep 2002		SSCI	
16 Sep 2002		HPSCI	
19 Nov 2002			SSCI

[REDACTED]

[REDACTED] BRIEFINGS TO HILL

Date	Subject	Committee	Members
20-Nov-2002		SSCI	
20-Nov-2002		SSCI	
4-Dec-2002	Interrogation of Bin al-Shibh	HPSCI	
5-Feb-2003	Detainees Interrogation Activities	HPSCI	Chairman Goss Ranking Member Harman
13-Feb-2003		SSCI	
08-July-2003		SSCI	
04-Feb-2004		HAC/D	





[REDACTED] BRIEFINGS TO HILL

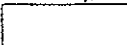
Date	Subject	Committee	Members
06-May-2004		HAC/DEF	Young Visclosky Tiahrt Sabo Obey Murtha Moran Hobson Dicks Bonilla Lewis Wicker Frelinghuysen
4-Sep-2003	CTC Interrogation Programs	HPSCI	Chairman Goss Ranking Member Harman
11-May-2004		HAC/DEF	None
15-Jul-2004	IG Report on CTC Program	SSCI	Chairman Roberts Vice Chairman Rockefeller
26-Jul-2004		SSCI	
27-Oct-2004		SSCI	

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## [REDACTED] BRIEFINGS TO HILL

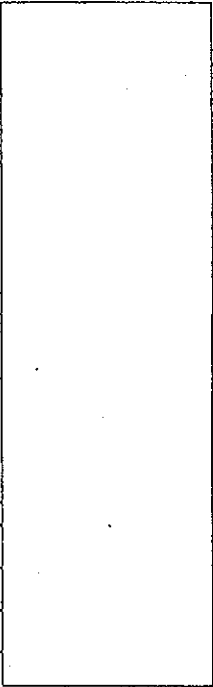
Date	Subject	Committee	Members
6-Dec-2004			
31-Jan-2005		SSCI	
1-March-2005	Briefing on rendition authorities	HPSCI	
8-Mar-2005		SSCI	Roberts
9-Mar-2005		SSCI	
30-Mar-2005		HPSCI	

[REDACTED]



BRIEFINGS TO HILL

Date	Subject	Committee	Members
1-Nov-2005	Detainee Program, no EITs	HPSCI	
4-Apr-2005	Analytical and legal aspect of renditions/detentions/interrogations	Senate	Majority Leader Frist
6-Apr-2005	Renditions, detention, debriefing SMD brief	HPSCI	
14-Apr-2005		SSCI	
19-Apr-2005	Renditions and Detainee Program	HPSCI	Mac Thornberry
25-Apr-2005		HPSCI	
3-May-2005		SSCI	
4-May-2005		HAC/DEF	
5-May-2005		HPSCI	
16-May-2005		HPSCI	Bud Cramer
29-June-2005		HAC/DEF	Young



BRIEFINGS TO HILL

Date	Subject	Committee	Members
29-June-2005		SSCI	Warner Feinstein Hatch Hagel Roberts Rickett Lott DeWine Bond
30-Jun-2005		HPSCI	Wilson Ruppersberger Holt Rogers Gallegly Davis
14-Jul-2005		SSCI	Thornberry
9-Sep-2005		SSCI	
14-Oct-2005		SSCI	

[REDACTED] BRIEFINGS TO HILL

Date	Subject	Committee	Members	
01-Nov-2005		HPSCI		
13-Dec-2005		HPSC		
26-Jan-2006		SSCI	Roberts Rockefeller	
2-Feb-2006		HPSCI		
		SSCI		
7-Feb-2006		HPSCI		
15-Feb-2006		HPSCI	Thornberry Robert Cramer	

[REDACTED]

[REDACTED] BRIEFINGS TO HILL

Date	Subject	Committee	Members
16-Feb-2006	DCIA discussed [REDACTED]	HPSCI	Rogers Renzi McHugh Ruppertsberger Wilson Davis Holt Thornberry Harman Everett Cramer Tierney Tiaht Reyes Ranking Member Harman Rick Renzi Mike Rogers Dutch Ruppertsberger Todd Tiaht
1 Mar 2006	Intelligence Reform and Terrorism Prevention Act (DN) defer question to DCIA)		
7 Mar 2006	Background on Detainee Program. Clarification between [REDACTED] and detainees	SSCI	

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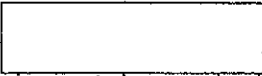
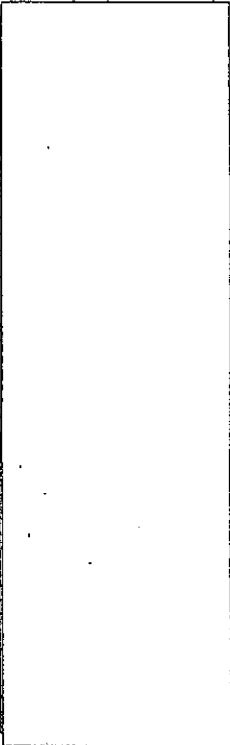
[ ] BRIEFINGS TO HILL

Date	Subject	Committee	Members
7-Mar-2006	Program history philosophy and mechanics of interrogation planning, threshold for admission, and value of intelligence	SSCI	
15-Mar-2006		SSCI	Chairman Roberts Vice Chairman Rockefeller Evan Bayh Christopher Bond Saxby Chambliss Russell Feingold Dianne Feinstein Chuck Hagel Carl Levin Trent Lott Barbara Mikulski John Warner
20 Mar 2006		SSCI	
31-Mar-2006		HPSCI	

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[REDACTED] BRIEFINGS TO HILL

Date	Subject	Committee	Members
31-Mar-2006	Discussion of legal issues	HPSCI	
12-Apr-2006		HPSCI	
19 Apr 2006		SSCI	
25-Apr-2006	Detainee Program, no EITs	HPSCI	
2-May-2006	IG Reports; implementation of IG recommendations	HPSCI	
8-May-2006		SSCI	
12 May 2006	Hand Delivery of CTC and IG comments on HPSCI draft Report on rendition, detainees, interrogations	HPSCI	
17-May-2006	IG provides staff with feedback on the HPSCI draft report on renditions, detainees, interrogations	HPSCI	





[ ] BRIEFINGS TO HILL

Date	Subject	Committee	Members
6-Jun-2006		HPSCI	
9 Jun 2006		HPSCI	
13 July 2006		HAC/DEF	
19 Jul 2006		HAC/DEF	
1 Aug 2006		SSCI	
10 Aug 2006		SSCI	
15 Sep 2006		HPSCI	
19-Sep-2006		Full Detainee Program, Including 13 EITs	House

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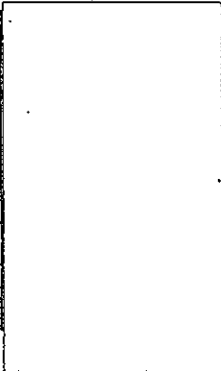
BRIEFINGS TO HILL

Date	Subject	Committee	Members
25 Sep 2006		SSCI	
17 Oct 2006			
16 Nov 2006	Latest Status of CIA high value terrorist detention program	SSCI	Pat Roberts Mike DeWine Orrin Hatch John Rockefeller
21 Nov 2006		SSCI	
8 Dec 2006		HPSCI	



[Redacted] BRIEFINGS TO HILL

Date	Subject	Committee	Members	
11 Dec 2006		HPSCI		
12 Dec 2006		SSCI		
19 Dec 2006		HPSCI	Rep. Reyes	
14 Feb 2007		Conditions Hearing	SSCI	Full Committee
14 Mar 2007		ROI Briefing, including EITs	HPSCI	Full Committee



TS/ [Redacted]

SSCI Requests to CIA

Description	# Questions	Due Date	Status
1	n/a	4/3/2007	DoD will provide transcripts
2	1	4/9/2007	with NCS/ORMS
3	1	4/9/2007	with OPNCS
4	2	4/11/2007	Being worked
5	1	4/12/2007	On schedule
6	16	4/13/2007	On schedule
7	117	4/13/2007	On schedule, but will require DNI coordination
8	n/a	4/15/2007	On schedule
9	23	4/16/2007	On schedule
10	40	4/27/2007	On schedule
11	n/a	none given	
12	3	none given	Response being finalized
13	15	none given	Being worked
14	2	none given	Being worked
15	42	4/11/2007	Sent 4/11/07
16	63	4/2/2007	Sent 4/11/07
17	n/a	none given	Sent 4/11/07
18	28	4/2/2007	Sent 4/11/07 with interim letter sent 4/9/07
19	n/a	4/10/2007	Sent 4/10/07
20	2	4/11/2007	Sent 4/9/07
21	1	4/6/2007	Completed with briefing on 4/3/07
22	17	4/5/2007	Completed

TS/ [Redacted]

PRINTED: Monday, December 06, 2004  
AT: 16:15

CODEWORDS:

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HANDLE VIA

CHANNELS 30 November 2004

# Memorandum for the Record

KEY: C/2004-00730

EVENT: MEMBER BRIEFING      DATE: 07/13/2004    TIME: 14:15    STATUS: COMPLETED  
PLACE: H-405    CAPITOL  
FOR:    HPSCI  
SUBJECT: INTERROGATIONS

**ATTENDEES:**

<u>ASSOCIATION</u>	<u>NAME</u>	<u>ROLE</u>
DCI/OCA	MOSKOWITZ, STAN	SUPPORT
DDO	PAVITT, JAMES (JIM)	BRIEFER
	[REDACTED]	SUPPORT
GC	MULLER, SCOTT	BRIEFER
HPSCI	GOSS, PORTER [R-FL]	CHAIRMAN
HPSCI	HARMAN, JANE [D-CA]	REP
HPSCI	[REDACTED]	STAFF
HPSCI/STAFF	[REDACTED]	STAFF
IG	HELGERSON, JOHN	BRIEFER
		SUPPORT

**Executive Summary:**

**Summary Text:**

(S) This briefing was at the request of D/OCA. There were three purposes. One was for the IG to present his recent report on interrogations and to answer questions. The second was for an update on the status of the interrogation process. The third purpose was to allow the General Counsel to inform them of the legal and policy issues that had recently arisen and give an appreciation of where all that stood.

(TS) [REDACTED] D/OCA began the meeting by outlining the three purposes of the meeting. The IG then briefed his report. He said that at first much went right with the debriefing and interrogation program, although the program was put together quickly. (He briefed from the paper attached.) He said that there was considerable substantive success; thousands of reports had been written; interrogations had led to the exposure and defeat of terrorist cells and terrorists. Chairman Goss asked how many of the reports were "strategic" and how many were "tactical". The IG indicated he was not sure. Ms. Harman asked when did we begin using "enhanced techniques." The DDO responded that it began with Abu Zabayda. The IG indicated that the interrogations were legal, including the use of enhanced techniques. The General Counsel said that the effort was working effectively under the DOJ 1 August 2002 memo which was the legal foundation for the debriefings and interrogations. The IG indicated that the 1 August memo did not address Article 16 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The article 16 that required signatory States to prevent in any territory subject to their jurisdiction acts of cruel, inhuman and degrading treatment or punishment not amounting to torture. The question was whether CIA's use of the enhanced techniques would transgress U.S. obligations under Article 16. The IG indicated he was also bothered in that the DOJ 1 August document did not address interrogations as we carried them out. He said that for the

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most part [redacted] and [redacted] detainees were well handled, except for the event in November 2003 in which a CIA officer brandished a handgun in front of a detainee. He indicated that was the event previously reported to the Chairman and Ranking Democratic Member. The DOJ, the IG indicated, took no action on that case. It was also true that none of the detainees who had died had been subjected to the enhanced techniques.

deaths were communicated to the two committees-- [redacted]

The IG indicated that all

[redacted] The [redacted] death in Afghanistan [redacted] in which David Passaro, a CIA contractor, was involved. Passaro was recently indicted on four counts of assault. He allegedly beat a person who subsequently died. It took a period of time for DOJ to move to the indictment because people who needed to be interviewed were scattered. The IG said the common link in these cases is that the Agency officers lacked timely guidance, training, experience and judgment.

(TS [redacted]) The IG then turned to the waterboard issue. He said that three people had been interrogated with the waterboard. On one, the IG felt it had been used excessively, beyond what the IG thought was the agreement with DOJ. Khalid Sheikh Mohammed (KSM) got 183 applications [redacted] The IG indicated the guidance in cables sent to the field evolved over time and that the guidance did not get to everybody who was involved in debriefing interrogations. In January 2003, the DCI issued guidance, seven months after the first debriefings began, and addressed only those detained [redacted] Harman asked if we were talking about the [redacted] She asked why the DCI guidance was late. The IG indicated that guidance had gone out earlier, but the real guidance was in January of 2003. The DDO explained that after 9/11 "we were thrown into a fury of activity." There was lots of confusion over interrogations, the enhanced program, and what was fully authorized. A [redacted] for instance, no one was authorized to do interrogations. This was also true at [redacted] He indicated that every instance of wrongdoing was promptly reported and investigated by the IG. He said there was no instance of the IG being kept in the dark.

[redacted] reaction to the Attorney General's seeming withdrawal of an earlier opinion that enhanced interrogations did not "shock the conscience" and that the techniques, therefore, were constitutional.

[redacted] The Chairman asked whether [redacted] had stood down in their activities. The IG said no. Rep. Harman noted that the [redacted] did not specify interrogations and only authorized capture and detention. She asked whether we had questioned detainees before the [redacted] The GC said yes, but no enhanced techniques had been used before Abu Zabayda and there was

[redacted] Abu Zabayda and enhanced techniques which started in August 2002. In August 2002 there was a lengthy unclassified opinion by DOJ generally discussing interrogations. In a separate and classified opinion addressed to John Rizzo, OGC, DOJ concluded the ten specific CIA techniques, which included the waterboard, were legal for use with Abu Zabayda. [redacted]

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[REDACTED]

(S) The GC laid out the legal analysis. The Attorney-General had consistently advised the NSC Principals that the CIA techniques did not violate US statutes, met all obligations under the treaties, including Article 16 of the Torture Convention, and would not violate U.S. constitution standards were those standards to apply to aliens overseas. But the AG's willingness to stand behind these prior statements changed after DoJ's lengthy unclassified legal memo on interrogations leaked and after the Abu Ghurayrabib scandal. CIA is now seeking to have DoJ reaffirm its prior written opinion that CIA's techniques do not violate the torture statute, and to issue a new written opinion on Article 16 of the Convention Against Torture and U.S. constitutional standards. At the same time, CIA is seeking renewed policy approval from the NSC Principals to continue using the enhanced interrogation techniques.

[REDACTED]

~~STANLEY M. MOSKOWITZ~~  
Director of Congressional Affairs

## Distribution:

- 1 - DAC (Official OCA Record)
- 1 - GC
- 1 - D/OCA

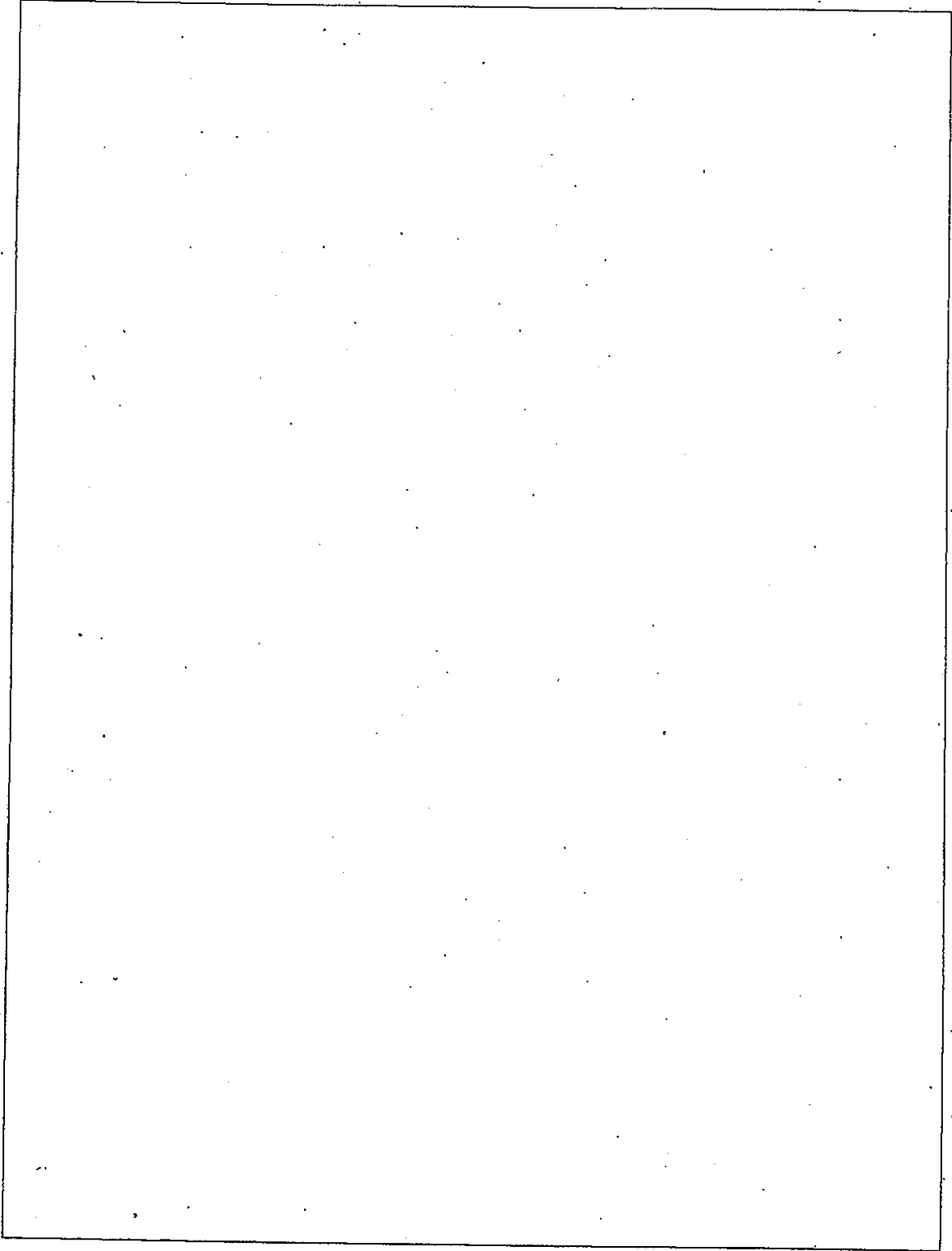
## Follow-up Action Items:

## Additional Information:

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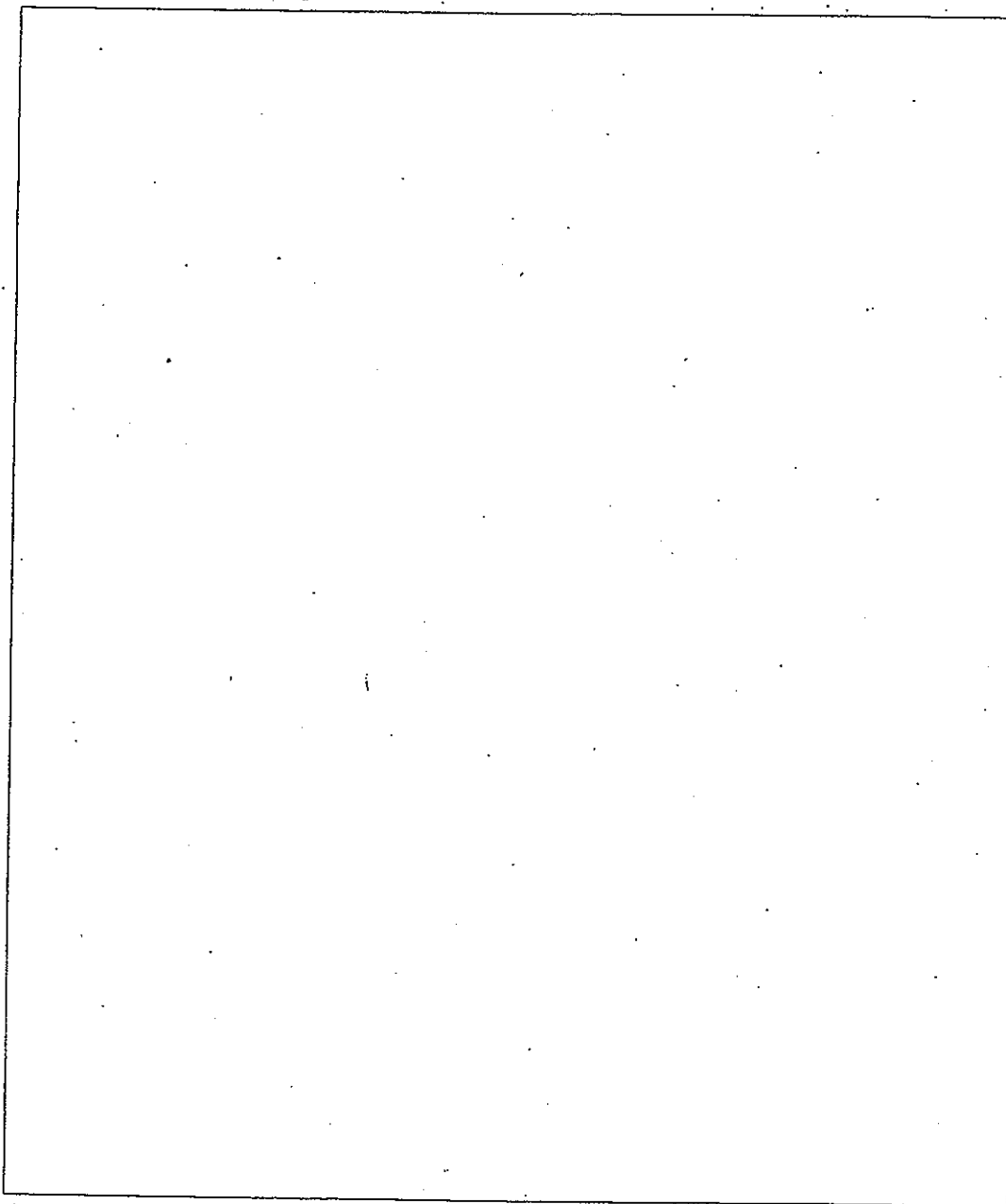


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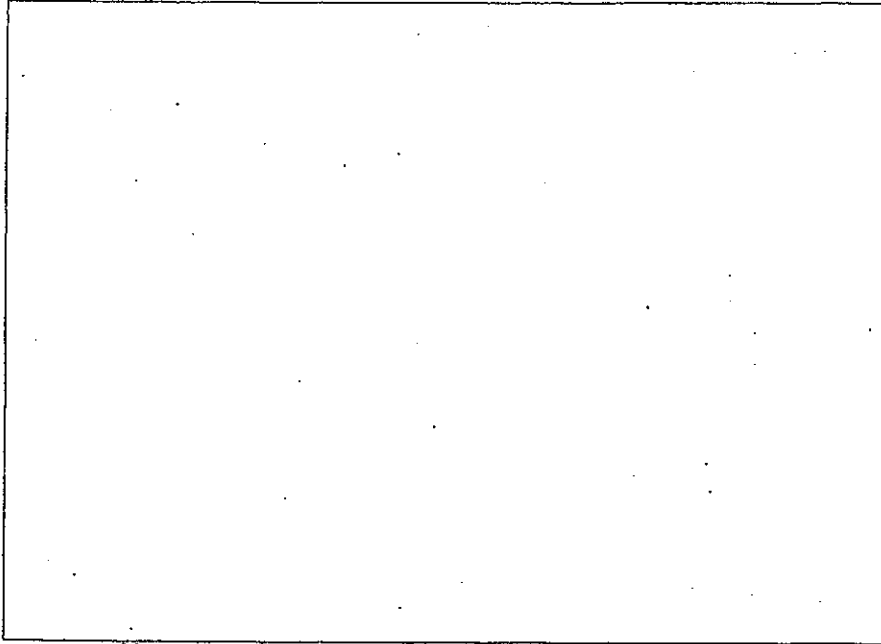
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PRINTED: Friday, April 02, 2004  
AT: 10:45

CODEWORDS:

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(b)(3)

DOC 23

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30 November 2004

Memorandum for the Record

KEY: C/2003-00086

EVENT: MEMBER BRIEFING DATE: 02/04/2003 TIME: 10:30 STATUS: COMPLETED  
PLACE: 211 HART  
FOR: SSCI  
SUBJECT: SENSITIVE NOTIFICATION

ATTENDEES:

<u>ASSOCIATION</u>	<u>NAME</u>	<u>ROLE</u>
DCI/OCA	MOSKOWITZ, STANLEY	
DDO	PAVITT, JAMES (JIM)	
GC	MULLER, SCOTT	
SSCI	ROBERTS, PAT [R-KS]	CHAIRMAN
SSCI		STAFF
SSCI/STAFF		

Executive Summary:

Summary Text:

(TS) [redacted] This briefing for Senators Roberts and Rockefeller took place in SH211 from 1030 to 1210 on 4 February. Rockefeller was unable to attend ; he was to be briefed by his principal staffer [redacted]. The purpose of the meeting was to brief the Senators in their new capacities as Chairman and Vice Chairman on our "enhanced interrogation techniques". The briefing was to be similar to that given to their predecessors Senators Graham and Shelby. Before the meeting could be scheduled, two events occurred about which the Senators needed to be informed. These were , in chronological order, the awareness of senior officers, to include the General Counsel, the D/ OCA , and the DCI/COS that tapes had been taken and retained of the interrogation of Abu Zubayda and , in late December 2002, the inappropriate "interrogation" of terrorist operative Nashiri by CIA officers. All three subjects were briefed in considerable detail to Senator Roberts and staffers

(TS) [redacted] The first part of the briefing by Pavitt and [redacted] described in great detail the importance of the information provided by Zubayda and Nashiri, both of whom had information of on-going terrorist operations, information that might well have saved American lives, the difficulty of getting that information from them, and the importance of the enhanced techniques in getting that information. Both Zubayda and Nashiri were described as founts of useful information, even though it seems clear that they have not, even under enhanced techniques, revealed everything they know of importance. [redacted]

(TS) [redacted] The enhanced techniques were described in considerable detail, including how the water board was used. The General Counsel described the process by which the techniques were approved by a bevy of lawyers from the NSC, the Vice President's office and the Justice Department, including the Criminal Division and the Attorney General.

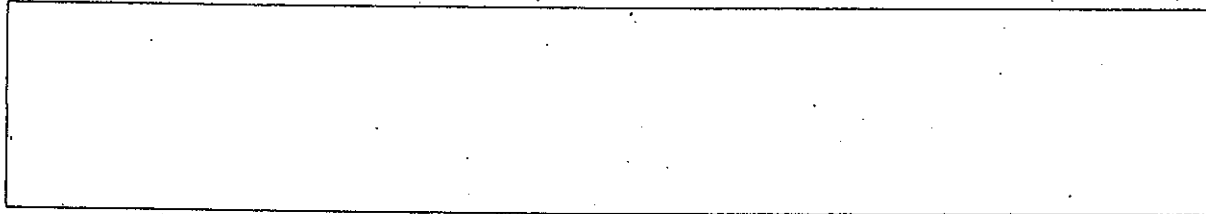
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who opined that the techniques were legal under U.S. law.

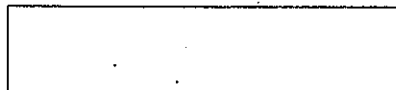
(TS [redacted]) The Senator was briefed by Pavitt on the events surrounding the inappropriate "interrogation" of Nashiri. These included the cocking of a pistol (reportedly unloaded) near his blind-folded face, and the brandishment of an electric hand held drill (at this, Senator Roberts winced). Pavitt spoke disparagingly of the actions of the officers who violated guidance and stated that he had asked for the Inspector General's investigation, of which the SSCI has recently been notified.

(TS [redacted]) Pavitt and Muller briefly described the circumstances surrounding the existence of tapes of the Zubayda debriefing, the inspection of those tapes by OGC lawyers, the comparison of the tapes with the cables describing the same interrogations. According to Muller, the match was perfect and [redacted] who did the review was satisfied that the interrogations were carried out in full accordance with the guidance. Muller indicated that it was our intention to destroy these tapes, which were created in any case as but an aide to the interrogations, as soon as the Inspector General had completed his report. (In a subsequent briefing to Congressmen Goss and Harman, Muller said that the interrogators themselves were greatly concerned that the tapes might leak one day and put themselves and their families at risk.) Senator Roberts listened carefully and gave his assent.



(TS [redacted]) Throughout the briefing Senator Roberts posed no objection to what he had heard. It seemed clear that he supported the interrogation effort.

(TS [redacted]) Roberts: [redacted] asked me whether I had "taken up the line" the Committee's, actually Senator Graham's, late November request to undertake its own "assessment" of the enhanced interrogation. I explained to Senator Roberts the dialogue I had had with [redacted], and our response that we would not support reading another staffer into the program nor allow any staffer to review the interrogations in real time or visit the clandestine site where the interrogations were taking place. Quickly, the Senator interjected that he saw no reason for the Committee to pursue such a request and could think of "ten reasons right off why it is a terrible idea" for the Committee to do any such thing as had been proposed. Turning to [redacted], he asked whether they thought otherwise and they indicated that they agreed with the Senator.



Stanley M. Moskowitz  
Director of Congressional Affairs

**Distribution:**

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1 - D/OCA

1 - General Counsel

**Follow-up Action Items:**

**Additional Information:**

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TOP SECRET / [redacted] 0300307

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DOC 38

[redacted]



03/07/05 12:52 PM

To: [redacted]  
cc: [redacted]

Subject: SSCI 3-hour briefing now on for this afternoon 2-5

FYI, Apparently learning the briefing with the VP had been moved to tomorrow, the SSCI (unclear exactly who) is calling for a 3-hour briefing this afternoon on the detention/interrogation/rendition program. It only makes sense to have the same set of briefers cover all these matters, but that will complicate preparing the DCI for tomorrow. [redacted] going to call one of the DCI EAs for guidance.

Given the scope of the expected 3-hour session [redacted] should be represented as well.

TOP SECRET / [redacted] 20300307

Classified Statement for the Record

Senate Select Committee on Intelligence

General Michael V. Hayden  
Director, Central Intelligence Agency

12 APRIL 2007

(U) Thank you Mr. Chairman and members of the Committee.

~~(PS//)~~ ~~(NF)~~ On 14 February 2007, we discussed renditions, one of the key tools the Central Intelligence Agency uses in the Global War on Terror; today, I have come to speak with you in more depth about a related program, our detention of key members and associates of al-Qa'ida. The Committee may remember that I have spoken with you in some detail on the subject of the CIA Rendition, Detention and Interrogation program in September 2006.

~~(TS//)~~ ~~(NF)~~ This Statement for the Record will focus on the detention program authorized by the [redacted] and established in the wake of the March 2002 capture of senior al-Qa'ida lieutenant Abu Zubaydah, expanding on my oral remarks with details about the history of the program, the safeguards we have built into it, the reasons CIA is best placed to manage this high value detainee interrogation and debriefing effort.

~~(TS//)~~ ~~(NF)~~ History of the Detention Program

~~(PS//)~~ ~~(NF)~~ As I mentioned in my 14 February statement on the renditions program, in the wake of the 11 September attacks on this country—which represented the most devastating single assault on our territory in the nation's history—the President directed all agencies of the US Government to work to assure that no such barbaric act could happen again. The

~~(TS//)~~ ~~(NF)~~ it was not until the capture of key al-Qa'ida lieutenant Abu Zubaydah in March 2002 that the need for a CIA program became clear. Abu Zubaydah was an up-and-coming lieutenant of

Usama Bin Ladin (UBL) who had intimate knowledge of al-Qa'ida's current operations, personnel, and plans. Because of the importance of his information to protecting the United States, it was necessary for US officials to interrogate Zubaydah to ensure that: 1) the US Government had timely access to actionable intelligence, 2) all US Government intelligence, homeland security, and law enforcement questions were asked, 3) there was no filter between Zubaydah's information and the US Government.

~~(TS//NF)~~ While FBI and CIA continued unsuccessfully to try to glean information from Abu Zubaydah using established US Government interrogation techniques, all of those involved were mindful that the perpetrators of the 11 September attacks were still at large and, according to available intelligence reportedly, were actively working to attack the US Homeland again. CIA also knew from its intelligence holdings that Abu Zubaydah was withholding information that could help us track down al-Qa'ida leaders and prevent attacks. As a result, CIA began to develop its own interrogation program, keeping in mind at all times that any new interrogation techniques must comply with US law and US international obligations under the 1984 UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

~~(PS//NF)~~ A handful of techniques were developed for potential use; these techniques are effective, safe, and do not violate applicable US laws or treaty obligations. In August 2002, CIA began using these few and lawful interrogation techniques in the interrogation of Abu Zubaydah. As stated by the President in his speech on 6 September 2006, "It became clear that he (Abu Zubaydah) had received training on how to resist interrogation. And so the CIA used an alternative set of procedures...the procedures were tough, and they were safe, and lawful, and necessary."

- Prior to using any new technique on Abu Zubaydah, CIA sought and obtained from the Department of Justice an opinion confirming that none of these new techniques violated US statutes prohibiting torture or US obligations under the UN Convention Against Torture.

~~SECRET~~

30 November 2004

# Memorandum for the Record

KEY: C/2004-00520

EVENT: STAFF BRIEFING      DATE: 05/10/2004 TIME: 17:15 STATUS: COMPLETED  
PLACE: 119      DIRKSEN  
FOR: SAC/DEF  
SUBJECT: INTERROGATIONS

ATTENDEES:

<u>ASSOCIATION</u>	<u>NAME</u>	<u>ROLE</u>
DCI/OCA	MOSKOWITZ, STANLEY	
GC	MULLER, SCOTT	
SAC/DEF		STAFF
SAC/DEF		STAFF
SAC/DEF		STAFF

Executive Summary:

Summary Text:

(S) On 10 May 2004, CIA's General Counsel outlined for the staffers the legal regimen that dictated our interrogation activities that principally arose from the Geneva III and IV agreements. He described the differences between the two Geneva agreements as they pertained to situation. He indicated that CIA was following Geneva, and in fact that some of our rules might be described as more stringent than Geneva required.

(S) The General Counsel had previously received White House concurrence to acknowledge that, with respect to counterterrorism, which was approved by the White House and the Attorney General. These were deemed lawful and were not strictly under the Geneva agreement. He indicated that the Chairmen and Ranking Members of the Senate and House Intelligence Committees had been briefed as well as staff directors, but those are the only Members/staff of Congress that had been briefed. Mr. indicated that he would pass on the details of the General Counsel's briefing to his principal, Sen. Inouye.

Stanley M. Moskowitz  
Director of Congressional Affairs

Distribution:

- 1 - DAC (Official OCA Record)
- 1 - GC
- 1 - D/OCA

Follow-up Action Items:

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Additional Information:

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Mr.

OCA 2005-00241

CIA/OCA/

(8 June 2005)

\SSCI cover letter to.

QFR\_060705.doc

Enclosure1:

SSCI QFRs June 05

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TS/11 1/18/81

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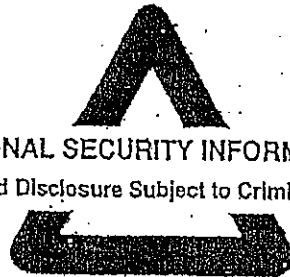
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Washington, D.C. 20505

OCA 2005-00241

8 June 2005

Mr.  
Minority Staff Director  
Select Committee on Intelligence  
United States Senate  
Washington, D.C. 20510

Dear

(C) Enclosed are responses to questions posed by you and other staff members of your Committee during the 15 April 2005 Counterterrorism briefing. Our response to Question 6 relative to the Interagency Intelligence Committee on Terrorism (IICT) will be forthcoming.

(U) Because of the sensitivity of the information, access should be limited only to those individuals on your staff briefed on this compartment.

(C) Should you have any questions regarding this matter, please do not hesitate to call me or contact \_\_\_\_\_ of my staff at \_\_\_\_\_

Sincerely,

Joe Wippl  
Director of Congressional Affairs

Enclosures

cc: Mr.

~~CONFIDENTIAL~~ When Separated  
from Enclosures

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~~/MR~~

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~~/MR~~

Question 2. Why were these statements/claims declassified for use in the various speeches cited in the Congressional Notification if there was no corroboration of the reporting? Who authorized the declassification of this material? Who made the decision to use this uncorroborated reporting?

Response:

Question 5. One of the briefers said that lying is a detainee strategy, as are allegations of torture, and that this is in their Training Manual. Please provide details via reporting, finished intelligence, or provide a copy of this portion of the Training Manual.

Response:

(X) The Training Manual can be found on the Internet in various locations, one being the Department of Justice website. The address to the specific page is:

<http://www.usdoj.gov/ag/trainingmanual.htm>

(The search term "al Qaeda Training Manual" can be used to get to the manual once you are on the DOJ website.)



Response:

(U) Response will be forthcoming.

Question 9. Please provide copies of the DoJ opinions provided to CIA on issues such as renditions, detainees, and interrogations—to include how to interpret Article 16 of the International Convention Against Torture. If we cannot provide copies, please provide dates for the array of opinions so that SSCI can ask DoJ for them.

Response:

(U) In order for the SSCI to have the most current opinion, please make this request directly to the Department of Justice.

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Classified Statement for the Record

0000014

Senate Select Committee on Intelligence

General Michael V. Hayden  
Director, Central Intelligence Agency

12 APRIL 2007

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Usama Bin Ladin (UBL) who had intimate knowledge of al-Qa'ida's current operations, personnel, and plans. Because of the importance of his information to protecting the United States, it was necessary for US officials to interrogate Zubaydah to ensure that: 1) the US Government had timely access to actionable intelligence, 2) all US Government intelligence, homeland security, and law enforcement questions were asked, 3) there was no filter between Zubaydah's information and the US Government.

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- Prior to using any new technique on Abu Zubaydah, CIA sought and obtained from the Department of Justice an opinion confirming that none of these new techniques violated US statutes prohibiting torture or US obligations under the UN Convention Against Torture.

- As CIA's efforts to implement these authorities got underway in 2002, the majority and minority leaders of the Senate, the Speaker and the minority leader of the House, and the chairs and ranking members of the intelligence committees were fully briefed on the interrogation procedures.
- After the use of these techniques, Abu Zubaydah became one of our most important sources of intelligence on al-Qa'ida.

~~TOP SECRET//~~~~(NF)~~ The Procedures Governing the Interrogation Program~~TOP SECRET//~~

~~(NF)~~ The CIA interrogation program from late 2002 until the passage of the Detainee Treatment Act in 2005 included the use of 13 "exceptional interrogation techniques" (EITs) derived from the Department of Defense's SERE training program, which is used to prepare US servicemen for possible capture, detention, and interrogation in hostile areas.

- All interrogation sessions in which one of these lawful procedures are authorized for use must be observed by non-participants to ensure the procedures are applied appropriately and safely. These observers are authorized to terminate an interrogation immediately should they believe anything unauthorized is occurring.
- Any deviations from approved program procedures and practices are to be immediately reported and immediate corrective action taken, including referral to CIA's Office of the Inspector General and the Department of Justice, as appropriate.

(U) Shortly after 11 September 2001, the majority and minority leaders of the Senate, the Speaker and the minority leader of the House, and the chairs and ranking members of the intelligence committees were briefed on:

- Briefings to the chairs, ranking members, and majority and minority staff directors have been provided on multiple occasions since that time, and in the fall of 2005, in connection with discussion on the Detainee Treatment Act, several other members were briefed on the program, including the *interrogation procedures*.



- The Department of Justice (DOJ) has reviewed procedures proposed by the CIA on more than one occasion and determined them to be lawful.
- The program has been investigated and audited by the CIA's Office of the Inspector General (OIG), which was given full and complete access to all aspects of the program.

~~(S//)~~  
Lives

~~(NF)~~ Benefits of the Program: Capturing Terrorists, Saving

~~(S//)~~ Since the 2002 inception of the program, high value detainee reporting has become a crucial pillar of US counterterrorism efforts. CIA assesses that a significant number of its knowledge of al-Qa'ida has been derived from detainee reporting, and well over half of our finished intelligence products on the group since 2002 make some reference to this reporting.

- For both warning and operational purposes, detainee reporting is disseminated broadly among US intelligence and law enforcement entities and
- For today's briefing, I'm going to highlight a few key areas where detainee reporting has played a significant role: capturing other terrorists, disrupting plots, advancing our analytical understanding of and operations against al-Qa'ida, and helping to corroborate and direct other sources of collection. The President discussed some of these successes in his September 2006 speech and some of this material was briefed to staff members during previous Congresses, but I believe it is worthwhile for the sake of the current Committee to provide this explicitly detailed account to you today, so that you can get a better sense of why we view this program as so key to our fight against al-Qa'ida.

~~(S//)~~ ~~(NF)~~ Capturing Other Terrorists: Detainees have played some role—from identification of photos to providing in depth targeting information—in nearly every capture of al-Qa'ida members and associates since 2002.

- In March 2003, former al-Qa'ida external operations chief Khalid Shaykh Muhammad (KSM) provided information about an al-Qa'ida operative, Majid Khan, whom he was aware had recently been captured. KSM—possibly believing the detained operative was “talking”—admitted to having tasked Majid with delivering \$50,000
- Khan—confronted with KSM's information about the money—acknowledged that he delivered the money to an operative named “Zubair” and provided Zubair's physical

description and contact number. Based on that information, Zubair was captured in June 2003.

- During debriefings, Zubair revealed that he worked directly for Jemaah Islamiyah (JI) leader and al-Qa'ida's South Asia representative Hambali.

we used the information provided by Zubair to arrest Hambali.

- Next, KSM—when explicitly queried on the issue—identified Hambali's brother, 'Abd al-Hadi, as a prospective successor to Hambali. Information from multiple detainees, including KSM, narrowed down 'Abd al-Hadi's location and enabled his capture in Karachi in September 2003.
- Bringing the story full circle, 'Abd al-Hadi identified a cell of JI operatives whom Hambali had sent to Karachi for possible al-Qa'ida operations. When confronted with his brother's revelations, Hambali admitted that he was grooming members of the cell for US operations—at the behest of KSM—probably to continue trying to implement KSM's plot to fly hijacked planes into the tallest building on the US West Coast.

(TS/ ) In addition to these two key cases, a number of other significant captures have resulted thanks to detainee reporting. It is important to highlight that these cases involve law enforcement's use of our detainee reporting:

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- Jose Padilla: After his capture in March 2002, Abu Zubaydah provided information leading to the identification of alleged al-Qa'ida operative Jose Padilla. Arrested by the FBI in 2002 as he arrived at O'Hare Airport in Chicago, he was transferred to military custody in Charleston, South Carolina, where he is currently being held.
- Iyman Faris: Soon after his arrest, KSM described an Ohio-based truck driver whom the FBI identified as Iyman Faris, already under suspicion for his contacts with al-Qa'ida operative Majid Khan. FBI and CIA shared intelligence from interviews of KSM, Khan, and Faris on a near real-time basis and quickly ascertained that Faris had met and accepted operational taskings from KSM on several occasions. Faris is currently serving a 20-year sentence for conspiracy and material support to a terrorist organization.

~~(S//~~~~MF) I~~

~~(S//~~ ~~MF)~~ **Disrupting plots:** One of the fall-outs of detaining these additional terrorists has been the thwarting of a number of al-Qa'ida operations in the United States and overseas.

- The West Coast Airliner Plot: In the early planning stage of the attacks of 11 September, al-Qa'ida leaders considered an ambitious plot that called for striking both coasts of the United States with as many as ten planes in one operation. Usama Bin Ladin (UBL) reportedly scaled back that plan to the US East Coast only—saving the West Coast for a follow-on attack—and UBL specifically mentioned California as a target to be attacked in the weeks following 11 September, according to detainee reporting. Operatives assigned to this plot were detained during 2002 and 2003, including KSM. Evidence suggests—as I noted earlier—that Hambali was considering pursuing this plot, and his efforts were disrupted by his detention and his cell of operatives.

- Heathrow Airport plot: Shortly after his capture in March 2003, KSM divulged limited information about his plot to use commercial airliners to attack Heathrow Airport and other targets in the United Kingdom; he discussed this plot probably because he believed that key Heathrow plotter Ramzi bin al-Shibh, who had been detained six months previously, had already revealed the information. KSM speculated that the operation was completely disrupted with the detention of senior al-Qa'ida planner Khallad Bin Attash and Ammar al-Baluchi; a variety of other reporting suggests this assessment is accurate.
- The Karachi plots. Key members of al-Qa'ida's Pakistan network who were detained in 2003 have provided details of the anti-US attacks they were planning in Karachi against the US Consulate, Westerners at the airport, and Western housing compounds.

(S//NF) Advancing Our Understanding of Al-Qa'ida: Prior to the capture of Abu Zubaydah in March 2002, we had large gaps in knowledge of al-Qa'ida's organizational structure, key members and associates, intentions and capabilities, possible targets for the next attack, and its presence around the globe. Within months of his arrest, Abu Zubaydah provided details about al-Qa'ida's organizational structure, key operatives, and modus operandi. For example, it was Abu Zubaydah, early in his detention, who identified KSM as the mastermind of 9/11. Until that time, KSM did not even appear in our chart of key al-Qa'ida members and associates.

- In the years since 9/11, successive detainees have helped us gauge our progress in the fight against al-Qa'ida by providing updated information on the changing structure and health of the organization, in part because they can help illuminate other sensitive collection platforms for us.

~~(TS//~~~~//NF) Army Field Manual~~

~~(TS//~~ ~~//NF)~~ The Army Field Manual (FM 2.22.3) governs the interrogation of large numbers of detainees held by the US Military, who are captured in the course of traditional military hostilities. It is used by U.S. military personnel to help them collect tactical military intelligence from military detainees. Should the CIA be limited only to the interrogation techniques contained in the new Army Field Manual,

would not be sufficient to justify

continuing a covert CIA detention and interrogation program. The CIA program has proven to be effective after c

~~(TS//~~ ~~(NF)~~ We have been advised there is no/no classified annex describing or authorizing additional techniques. It must be noted that the cover sheet for FM 2.22.3 clearly states the manual is "Approved for public release; distribution is unlimited", hence UNCLASSIFIED. Consequently, we must assume that AQ and other organizations have or can easily obtain a copy and train their people to resist these techniques and the methodology. Hence, we have not only laid out our game plan for the taking but have included the entire playbook as well. As a result, should our interrogation of AQ suspects be limited to the techniques outlined in the field manual, we are left with very little offense and are relegated to rely primarily on defense. Without the approval of EITs to compliment the techniques approved in FM 2.22.3, we have severely restricted our attempts to obtain timely information from HVDs who possess information that will help us save lives and disrupt operations. Limiting our interrogations tools to those detailed in the field manual will increase the probability that a determined, resilient HVD will be able to withhold critical, time-sensitive, actionable intelligence that could prevent an imminent, catastrophic attack. In essence, we would be back to a pre-9/11 posture.

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(U) The Way Forward

~~(TS//NF)~~ CIA currently has no Enhanced Interrogation Techniques (EITs) approved for use with a detainee. Prior to being authorized for use, CIA requires a signed Executive Order, as required by the Military Commissions Act, and a DOJ opinion that each proposed method, whether applied individually or in tandem with others, would comply with applicable US law. Currently, seven EITs are under consideration.

~~(TS//NF)~~ ) At the entrance to an office in CIA's Counterterrorism Center is a sign and a reminder: "Today's date is September 12th, 2001." We make no apologies for this attitude or for the lawful and legitimate actions we have taken to counter al-Qa'ida. And let me be clear, our enemy is still potent and able to attack us here and overseas.

- While al-Qa'ida has conducted no new attack on the US Homeland, this is not for lack of trying. Al-Qa'ida was within weeks, if not days, of mounting an attack against planes

flying into the United States from London last summer that could have been more lethal than the 11 September attacks, and its leaders also continue to try to gain access to chemical, radiological, biological, and nuclear weapons.

- Al-Qa'ida's only obstacle to attacking us again is our continued assertive effort to stop them. CIA's detention and interrogation program remains critical to our ability to sustain this effort and protect the American people from another attack. As the President stated in his 6 September 2006 speech to the nation on The Creation of Military Commissions to Try Suspected Terrorists, "... the most important source of information on where the terrorists are hiding and what they are planning is the terrorists, themselves."

Thank you.

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(b)(3)

Memorandum for the Record

KEY: C/2004-00539

EVENT: STAFF BRIEFING DATE: 05/06/2004 TIME: 9:00 STATUS: COMPLETED  
PLACE: 119 DIRKSEN  
FOR: SAC/DEF  
SUBJECT: IRAQI DETAINEES

ATTENDEES:

ASSOCIATION	NAME	ROLE
		BRIEFER
		BRIEFER
		SUPPORT
		SUPPORT
		BRIEFER
		BRIEFER
		STAFF
		STAFF
		STAFF

Executive Summary:

(C/NF) This 6 May 2004 briefing on CIA involvement in alleged abuses of detainees being held in Iraq was scheduled for SAC/DEF in response to widespread media reporting concerning alleged detainee abuses at Abu Ghraib prison in Baghdad.

Summary Text:

(U) (Note: Information set forth herein is not a verbatim transcript of statements made at the briefing. Rather, it is a good faith effort to set down for the record information that was conveyed at briefing.)

(S//NF) [redacted] OIG representative [redacted] opened the briefing with an overview of [redacted] cases of alleged abuse against detainees in Iraq [redacted] alleged to have had some degree of involvement. [redacted] of the cases, [redacted] noted, had turned into ongoing criminal investigations by the Department of Justice (DOJ).

The first and most serious case was that of Manadal al-Jamaidi, who died while under detention. According to [redacted] al-Jamaidi, a former Iraqi intelligence officer captured on [redacted] while engaging in anti-coalition activity, was first held at Baghdad International Airport (BAI) and then transported the same day to Abu Ghraib Prison. During interrogation, [redacted] stated, al-Jamaidi [redacted] died. [redacted] notified Headquarters of the incident, and OIG sought the assistance of U.S. military [redacted] having an autopsy performed by the Armed Forces Institute of Pathology. The autopsy, according to [redacted] was performed [redacted], and the formal autopsy report was issued [redacted] with a finding of homicide as the cause of death. OIG obtained a copy of the report some time in February 2004. [redacted] noted that [redacted] was not at liberty to go into any further detail on this case due to the ongoing criminal investigation, which led to a round of discussion among assembled SAC/DEF and CIA staffers:

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(S//NF) [redacted] On 19 February 2004 the DCI sent a notification to the Hill on this case.

(S//NF) [redacted] Also, another note concerning the criminal referral was subsequently sent to the Hill.

(C//NF) [redacted] SAC/DEF also should have been informed of the criminal referral, not just the intelligence committees.

(Z//NF) [redacted] We are continuing to diligently work this case with DOJ and the military. More interviews are scheduled, some of which will require additional trips to Iraq.

(U) [redacted] Who is conducting the criminal investigation?

(U) [redacted] The Terrorism and Violent Crimes section at DOJ.

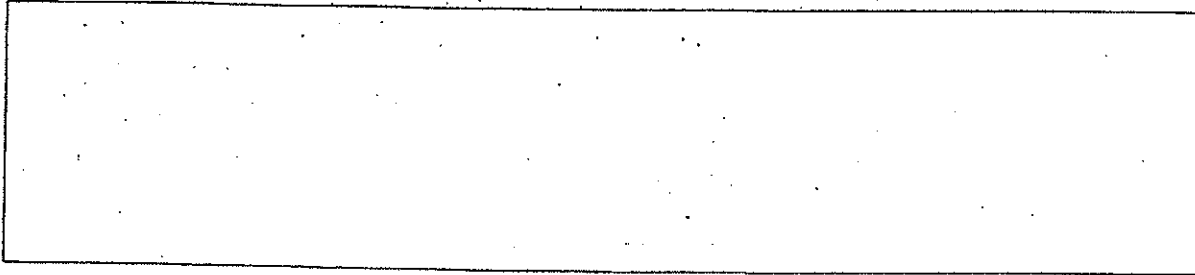
(U) [redacted] Have there been arrests? A grand jury?

(U) [redacted] I can't say.

(S//NF) The [redacted] case outlined by [redacted] was that of former Iraqi General 'Abid Hamad Mahawish al-Mahalawi, who was captured near al-Qa'im in western Iraq by the military. While under military custody al-Mahalawi died, and his death was ruled a homicide. Army CID has the lead on the investigation, and has asked for help. At some point prior to his death, [redacted] stated, [redacted] were in the presence of [redacted] working with Army CID to investigate allegations of mistreatment of him by [redacted] prior to his death. This case was also reported in the 29 January 2004 congressional notification that reported the al-Jamaidi case. A formal crimes report on this case has not yet been submitted.

(S//NF) [redacted] Can you state what was the precise cause of Mahawish's death?

(U) [redacted] No, I cannot comment due to the ongoing investigation.



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[Redacted]

(U) [ ] What is Army policy on punishment for mistreatment?

(U) [ ] There's a range of punishments.

(U) [ ] The ultimate penalty is the death penalty, under federal statutes.

(U) [ ] Who determines if detainees are under the Geneva Convention?

(U) [ ] The Department of Justice.

(U) [ ] Are Agency employees under the Geneva Convention?

(U) [ ] This is not our area of expertise-

[Redacted]

~~(S/DF)~~ [ ] In the case of the first death,

~~(S/DF)~~ [ ] No, he was held by the military. We believe he was involved in killing Americans. The military kicks the doors, they hold the detainees..

(U) [ ] Whose rules are followed in interrogations?

[Redacted]

(U) [ ] What accounted for these lapses?

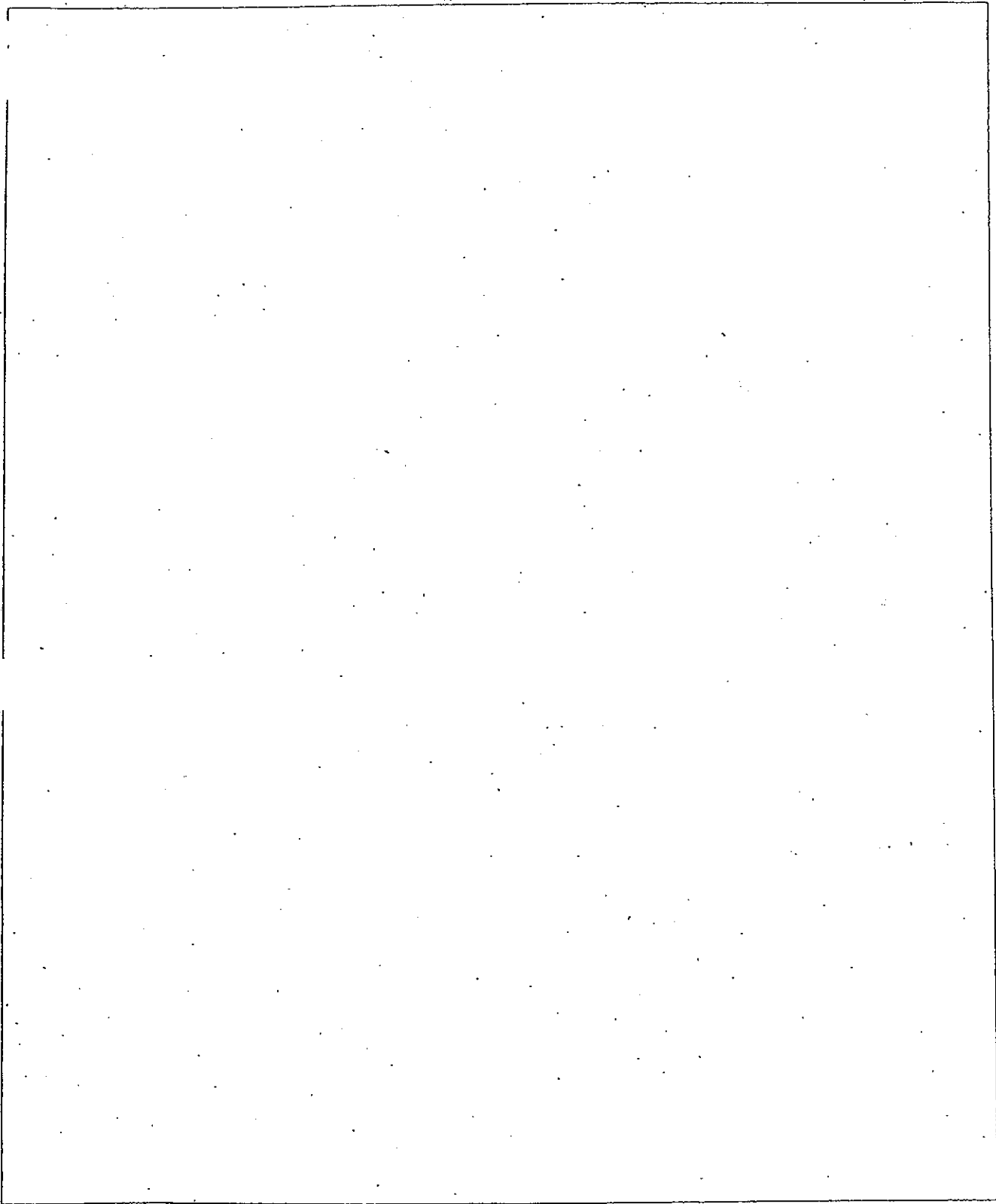
[Redacted]

~~(S/DF)~~ [ ] How could they not know the rules?

[Redacted]

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[Redacted]

(~~C/NF~~) [Redacted] We are trying to obtain the names of all of those individuals subjected to delayed registration to trace them.

(U) [Redacted] The press says they were "prepping" them for interrogation.

(~~C/NF~~) [Redacted] We had never heard this before, and we are looking in to it.

(~~C/NF~~) [Redacted]: General Ryder said he is looking into it and thus far he cannot substantiate it.

(U) [Redacted] 1

(~~C/NF~~) [Redacted] No. The accountability review board was stood up in January 2004. It's work should be done by the end of this month.

(~~C/NF~~) [Redacted] The Director has decided to expand it's review.

(U) [Redacted] What are the distinctions between Iraqi and al-Qaida prisoners?

(~~C/NF~~) [Redacted]

(~~C/NF~~) [Redacted] The DOJ has ruled that Iraqis fall under the Geneva Convention.

[Redacted]

Liaison Officer  
Office of Congressional Affairs

Distribution:  
1-DAC (official record copy)  
1-OCA (chrono).

Follow-up Action Items:

Additional Information:

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# Memorandum for the Record

KEY: C/2004-00555

**EVENT:** CMTE BRIEFING-CLOSED      **DATE:** 05/06/2004    **TIME:** 10:00    **STATUS:** COMPLETED  
**PLACE:** H405    CAPITOL  
**FOR:**    HPSCI  
**SUBJECT:** IRAQ DETAINEES

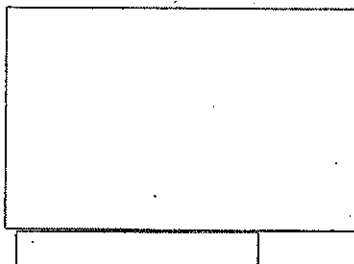
**ATTENDEES:**

<u>ASSOCIATION</u>	<u>NAME</u>	<u>ROLE</u>
CHIEF/NE	[REDACTED]	BRIEFER
D/OCA	MOSKOWITZ, STANLEY	SUPPORT
DC/NE	[REDACTED]	BRIEFER
DCI/OCA	[REDACTED]	SUPPORT
DO/NE	[REDACTED]	BRIEFER
HPSCI	GOSS, PORTER [R-FL]	CHAIRMAN
HPSCI	BEUREUTER, DOUG	REP
HPSCI	BOEHLERT, SHERWOOD L [R-NY]	REP
HPSCI	BOSWELL, LEONARD [D-IA]	REP
HPSCI	BURR, RICHARD M. [R-NC]	REP
HPSCI	COLLINS, MAC	REP
HPSCI	CRAMER, ROBERT (BUD) [D-AL]	REP
HPSCI	CUNNINGHAM, RANDY (DUKE) [R-CA]	REP
HPSCI	ESHOO, ANNA [D-CA]	REP
HPSCI	GIBBONS, JAMES (JIM) A [R-NV]	REP
HPSCI	HARMAN, JANE [D-CA]	REP
HPSCI	HASTINGS, ALCEB L. [D-FL]	REP
HPSCI	HOEKSTRA, PETER [R-MI]	REP
HPSCI	LAHOOD, RAY [R-IL]	REP
HPSCI	REYES, SILVESTRE [D-TX]	REP
HPSCI	RUPPERSBERGER, DUTCH [D-MD]	REP
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF
HPSCI	[REDACTED]	STAFF

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BRIEFER

Executive Summary:

In this closed briefing, U.S. military representatives were called by HPSCI to brief members on its detainee operations in Iraq, in reaction the widespread media coverage and controversy over alleged abuses of detainees there, especially at Abu Ghraib prison in Baghdad. CIA was invited by HPSCI to attend the briefing, and did so as backbenchers, responding to only a couple of questions posed by members as outlined below. The lead representatives for the military were Lieutenant General Keith Alexander, G2, Major General Don Ryder, Army Provost Marshall and Commander, Criminal Investigation Command, and Major General Michael Marchand, Deputy Judge Advocate General of the Army.

Summary Text:

(U) (Note: Information set forth herein is not a verbatim transcript of statements made at the briefing. Rather, it is a good faith effort to set down for the record information that was conveyed at the briefing.)

(U) Representative Jane Harman opened the briefing by commenting that she found the published photos of activities at Abu Ghraib prison to be deplorable. Ms. Harman also said that she was distressed that HPSCI had not been informed of the matter until the day before. In doing so she noted that the DCI had the day before made clear that as far as could be determined the CIA was not involved in any of the activities being reported about Abu Ghraib in the open media. Ms Harman further expressed her desire to "have it all," i.e. all information on what happened at Abu Ghraib, and her determination that even those at the highest levels as appropriate must be held accountable.

(U) General Alexander read a prepared statement (a copy of General Alexander's statement provided to SSCI the day before on 5 May 2004, which is substantially the same as his statement at this briefing, is attached) and in reply asserted that the U.S. Army thinks that what happened to detainees at Abu Ghraib is totally reprehensible, and not condoned by the Army.

(U) The remainder of the briefing was largely constituted of questions and answers, as outlined below:

(U) Goss: We and other committees should have been briefed earlier on this; there is therefore an aspect to this of being ambushed. We try to be transparent about our concerns, and we expect to receive the same from you in return. This committee's principal interest is intelligence, and the use of interrogation as a tool to obtain intelligence. It is not clear if the mistreatment of detainees was gratuitous, or if sanctioned but unacceptable.

(U) Marchand: We are guided by AR 15-6. Typically, a report of misconduct would be reported up the chain of command; this kind of an investigation does not automatically go up to the Secretary.

(U) Goss: What is of relevance here is the alleged incidents--we should have been advised.

(U) Alexander: In response to allegations in the Taguba report that military intelligence personnel were involved, we did a "procedure 15"--on the CID side, there are no charges or substantiation of charges against military intelligence personnel.

(U) Ryder: There is however "titled" or credible information that they were involved.

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(U) Goss: Let's get back to my basic question. Were the abuses part of interrogator activity?

(U) Ryder: There is no evidence or indication that anyone in intel directed it. These acts appear to have been committed by undisciplined soldiers who lost their values and did not understand what they were doing on a midnight shift.

(U) Goss: Do you think it was gratuitous?

(U) Ryder: Yes.

(U) Goss: If these activities were sanctioned or tolerated that would be of huge importance. That is very important to know because then corrections would be needed. Intelligence is a tool that we need. We know that there have been isolated instances. Do we have widespread problems?

(U) Ryder: Any case is inappropriate.

(U) Goss: Are there dozens of such cases?

(U) Ryder: There is a total of 35 known cases. From December 2002 to today, 25 deaths, 10 others are soldier misconduct. Of the 25 deaths, 14 are undetermined or natural causes. One is justified manslaughter, with a soldier following ROE. There are two ongoing homicide investigations. Ten other cases of physical abuse, and two cases of sexual assault against females.

(U) Goss: In these cases, were interrogations underway?

(U) Alexander: In two cases, interrogator personnel in Afghanistan may be involved, based on "titled" information--no charges have been filed yet.

(U) Goss: Were these cases of gratuitous acts, or part of assigned procedures on interrogation?

(U) Ryder: In eight cases there may have been abuses during interrogation.

(U) Goss: If these actions were sanctioned, that will be important.

(U) Harman: This is a 10 in the Richter Scale. This is totally unsatisfactory and I am disgusted. It is not satisfactory to tell me about rules and procedures. We need to know a lot more. The Taguba Report said interrogators asked the guards to set up favorable conditions for interrogations. General Miller from Guantanamo went to Baghdad in August 2003 and did a report--did he report any abuses?

(U) Alexander: No abuses were reported in the Miller report. We are not shirking our responsibility. In describing rules and procedures we want to clarify reporting channels. We take these matters very seriously.

(U) Harman: Who read and reacted to the Taguba Report? Why was the reaction so slow?

(U) Marchand: On 13 January 2004 a soldier came forward. On 14 January the process started, we started to investigate the prison. Most of us were aware by 15 January. Six of the soldiers already have charges presented to them. Three have been referred to trial. That is moving pretty quickly.

J) Harman: I remain unsatisfied with how this has been handled. We should have been briefed on the 14th.

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(U) Bereuter: There is nothing more damaging to U.S. image and interests. There has to be a better mechanism to get to top levels of attention. Sergeant Davis said nothing was ever in writing for Wings 1 A and B -- they were in MI hands. Also, there were ghost detainees hidden from the Red Cross and other agencies. This suggests it was all part of a procedure.

(U) Alexander: To date, there has been no other corroborating evidence. We are still looking for who gave those instructions.

Ryder: There is no evidence that leads to those soldiers' statements. Those soldiers were trained. They had obligations to report if they saw something.

(U) Bereuter: Why was it not immediately reported up the chain?

(U) Alexander: I can't say. Your logic is sound.

(U) Hastings: Who were the contractors responsible to?

(U) Alexander: The practice was to have two people in the room at all times, including a 97E from the 205th MI Brigade.

(U) Hastings: Can the military prosecute the contractors?

(U) Marchand: To date, no.

(U) Hastings: What is meant by "set the conditions?"

(U) Alexander: This means the rules and procedures to be followed in interrogations.

(U) Hastings: Who in OSD is responsible for formulating detainee policy?

(U) Alexander: Dr. Cambone.

(U) Hastings: In the future, you need to be mindful against just low ranking soldiers taking the heat. If we were in Japan, you Generals would be falling on your swords. At some point, seniors need to step up.

(U) Boehlert: Of the 35, anything else?

(U) Ryder: That's it.

(U) Boehlert: Can we be provided with narratives for all of the cases?

(U) Ryder: Yes.

(U) Boehlert: Did interrogations usually involve military and civilian interrogators?

(U) Alexander: Lieutenant Colonel Jordan ran interrogations. There was a number of teams. For each interrogation, there was one civilian and one military.

(U) Boehlert: Were there ROE?

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(U) Alexander: Yes.

(U) Boehlert: Is the Justice Department involved?

(U) Marchand: We are still looking at what the civilians did.

(U) Boehlert: Shouldn't Justice be there?

(U) Alexander: I'm not sure they're not.

(U) Boehlert: What have our coalition partners said?

(U) Alexander: Other facilities are run by other countries. The coalition puts out ROE. We are not a part of the British investigations.

(U) Boehlert: I hope you can sense the strong feelings here of outrage and indignation.

(U) Boswell: Words are not adequate to express--I second my colleague's comments. There are 15-20,000 contractors in Iraq. Are the contractor interrogators former military?

(U) Alexander: Yes, former 97E's. Many have served 20 or more years in the military. There are 4,200 linguists.

(U) Boswell: We may need to look at the contractor situation, colleagues.

~~(C/NF)~~ Alexander: 548 97E's are on active duty. We need to increase them to 1,800--we recognize this issue.

(U) Gibbons: This is a great disappointment. In reading the Taguba Report, it is unclear to me if we have military police or military intelligence in command. This is a big concern. There was poor training of civilian detention guards. Many failures throughout the chain of command. Can you document changes in training since these disclosures?

(C) Alexander: Some changes have occurred in the middle. General Sanchez put General Pappas in charge of the facility in November. Mobile training teams have been sent out, additional training on interrogation operations.

(U) Gibbons: What about interrogation ROE? When put in place?

(U) Alexander: Those are standard.

(U) Gibbons: So everyone knew their responsibility. Somehow there is a failure in command.

~~(C/NF)~~ Ryder: There are three kinds of MP's, all are trained how to treat people early on, in basic and advanced individual training. They knew they had the authority and obligations. There was additional training by training teams of 31E's--they went to Abu Ghraib. Soldiers there have all been retrained. What you see in the paper, it is a discipline, small unit issue.

(U) Eshoo: I am a proud Roman Catholic. The Catholic scandal has comparisons here. The Bishops have given explanations--tin symbols. How could a human being ever allow or condone what happened? Who in the chain of command spoke up directly to the top? General Alexander, how is this "blurred?" The Taguba Report said the MP's set the conditions--this sounds dark to me--what does it mean? Also, you say it is a small unit leadership issue - how? What recommendations did General Miller provide in October 2003? Can we get a copy of the Miller report? On 1

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ily, who takes over the prisoners?

(S/NF) Ryder: Regarding the small unit comment: those acts were on the watch of a staff sergeant, the lowest level of unit. The military depends upon its NCO's. They are the backbone of the Army.

(U) Eshoo: I appreciate that. But my sense is that no one was taken enough by the abuses to say "oh my God," and to understand the implications for our country.

(U) Alexander: We understand. When I was in charge of INSCOM, I was responsible. If there was an offense, there was an investigation. Here, there was an investigation.

(U) Marchand: I believe I heard General Pace at the press conference with the Secretary of Defense say he heard about it on 15 January.

(S/NF) Alexander: On "setting conditions," by that we mean the procedures and incentives used with detainees in interrogations. You have them listed on paper (note: copy not obtained). There is a symbiotic relationship between MP's and intelligence in these situations that is important.

(C/NF) Ryder: On 1 July, the Iraqis will take over the penal system. We will continue to handle the security detainees.

(U) Cunningham: Other scandals. The pages here in Congress. Enron. The Catholic Church. In all these cases, the focus isn't on the good but on the bad. There is a stain on the U.S. as a result of this and that is what has us so upset. Leadership is at the point of contact. Here, they seem to have lost attention to detail. Bureaucracies tend to prevent immediate action. There are exceptions to the chain of command. When I was a wing commander in the military, I told my people to go to me directly and speedily in certain cases. They included sexual harassment. Racial prejudice. Spouse and child abuse. Drug abuse. In other words, any issues that could prove critical to the reputation of the unit, the service or our country. Twice, I shut down my squadron to address such issues. We are upset by the failure here to notify.

(U) Harman: Hear, hear!

(U) Holt: [redacted]

(S/NF) [redacted]

(U) Holt: The military has many types of contractors. What is the chain of command for these people? Does everybody who associates with prisoners have training? Can we see the training manuals? Are your investigations of deaths different [redacted]

(S/NF) [redacted] We work closely together. In the case of one of the deaths, the military has primacy and we are assisting the investigation. In this case, some Agency personnel had exposure to the deceased.

(U) Holt: Are CIA personnel involved in military investigations and vice versa?

(C) Ryder:

(U) Holt: Same for CIA?

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(U)  I believe so. The same nexus of coordination for all.

(U) Hoekstra: Who can talk to us about all of the other allegations? Mr. Chairman I recommend we get them here.

(U) Alexander: General Faye is looking at all of those allegations now.

(U) Hoekstra: Are all of these investigations alleging MI involvement - are you following up?

(C/NF) Alexander: Yes.

(C/NF) Ryder: Some have invoked their rights.

(U) Ruppertsburger: Are the videos more explicit?

(U) Ryder: I have not seen them - they are being transported as evidence.

(U) Ruppertsburger: Have you seen General Miller's report?

(U) Alexander: I saw it. I'm not sure it went to the Secretary of Defense. It went to General Sanchez, theater, OSD and Dr. Cambone.

(U) Ruppertsburger: Were any CIA officers involved in directing MP abuses?

(U) Alexander: Not to my knowledge.

(C/NF) Ruppertsburger:

(U) Alexander: I have no knowledge of that.

(U) Ruppertsburger: All of this was at the small unit level, all reservists?

(U) Ryder: Yes, all reserve. Their mission was this job.

(U) Ruppertsburger: My office was contacted by constituents on this matter in January. I forwarded the information and then heard nothing. Do you have any recommendations on how to fix the PR problem?

(U) Alexander: I'd like to take that for the record.

(U) Ruppertsburger: When can you have a response?

(U) Alexander: Monday or Tuesday of next week.

(U) Marchand: No soldier anywhere could believe that those actions represent the norm. Nevertheless, we will do more training.

(U) Alexander: There is no defense of the indefensible.

(U) Hastings: Can we get the Miller Report?

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(U) Collins: From the time you received the report, how long was it before orders were issued?

(U) Alexander: The next day.

(U) Collins: What was the window of activities?

(C/NF) Ryder: Mid or end of September 2003 to early December 2003, it appears.

(U) Collins: So this was just after Miller's visit, which resulted in pressure to step things up. What was the date to step things up? The date of Saddam's capture?

(C/NF)  10 December 2003.

(U) Collins: What is emotional hate?

(C/NF) Marchand: This is when interrogators act that way to influence prisoners.

(U) Collins: What were the new results of these stepped up procedures?

(U) Alexander: I don't know.

(U) Goss: So what we have here are allegations made by some that the MI told them to do it. Is that about it?

(U) Alexander: Yes.

(U) Goss: Do we have necessary professional training for interrogators in the Army?

(U) Alexander: I believe that we do have the training and procedures in place.

(C/NF) Goss: Guantanamo was under the glass, and turned into a success story. General Miller went to upgrade professionalism--orders went out after he came back. Is anyone policing the abuses? We will be looking further into this.

(U) Harman: This has been a useful briefing. Representative Cunningham gets a gold star for the way he expressed it. Moral outrage seems to have been missing. There was an obligation to notify this committee that was breached. We were in Baghdad a month after the pictures were obtained--nobody out there said anything.

(U) Holt: The fact that we were not notified says that it was not seen as important. How can we distinguish between the contributions of Guantanamo and Abu Ghraib? I went to Fort Dix to see interrogator training there and was impressed. Should there be greater use of video surveillance?

(C/NF) Alexander: Great idea. We use it at Guantanamo.

Liaison Officer  
Office of Congressional Affairs

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**Distribution:**

1-DAC (official record copy)

1-OCA (chrono)

**Follow-up Action Items:**

**Additional Information:**

~~SECRET~~



C/CTC

02/14/05 08:43 AM

To:

cc:

Subject: Phone call from NSC/LGL re NY Times article

I was called this morning by NSC Legal (who was calling at request of WH Counsel) in response to NY Times article over the weekend that SSCI would hold hearings on CIA's detention/interrogation of terrorists. NSC Legal (Dan Levin) asked whether any such hearing were scheduled. I told him I was unaware of any such hearings and that weekend reporting caught me by surprise. I also referred him to the Wolf Blitzer transcript (in today's Media Highlights) that indicated that SSCI was not planning to "investigate" but to "monitor" any CIA activities.

Mr. Levin asked me to check and get back to him whether SSCI has actually asked for any hearing. If they have not yet, but do at some point in the future, he would like to know soonest.

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PANEL II OF A HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT:  
NOMINATION OF ALBERTO GONZALES TO BE THE ATTORNEY GENERAL OF THE  
UNITED STATES CHAIRED BY: SENATOR ARLEN SPECTER (R-PA)  
WITNESSES: JOHN HUTSON, PRESIDENT AND DEAN, FRANKLIN PIERCE LAW  
CENTER; HAROLD HONGJU KOH, DEAN, YALE LAW SCHOOL LOCATION: 216  
HART SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME: 5:17 P.M.  
EST DATE: THURSDAY, JANUARY 6, 2005

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SEN. SPECTER: Under the committee rules we have one  
week for the submission of written questions.

I'd like to call our next witnesses, a panel of Dean  
Hutson, Mr. Johnson and Dean Koh.

Our first witness, in alphabetical order, is Dean John  
Hutson.

SEN. EDWARD KENNEDY (D-MA): Mr. Chairman, just while  
the witness is coming, can I extend a warm welcome to Dean Koh -  
- the whole panel -- but Dean Koh has a brother who ran the  
Public Health Service in Massachusetts and is -- was just  
under -- I would say under Republican governors, but his  
outreach was extraordinary, and his leadership was just  
exemplary. And he's just a very highly regarded and respected  
member of our Massachusetts community. And so I wanted to I am  
sure the good dean has seen him more recently than I have, but I  
just wanted to point out that service and the commitment to the  
public good runs long and deep in this family, and I appreciate  
the chance to extend a warm welcome.

SEN. LEAHY: If I could also note for the record too, Mr. Chairman, Dean Koh's daughter Emily is here too, a freshman at Yale. And I thought some day in the Koh archives they'll go back to this record and they'll be able to see her name is in there.

SEN. SPECTER: Well, thank you very much, Senator Kennedy and Senator Leahy, for those comments.

As I have started to outline, our first witness alphabetically is Dean John Hutson, dean and president of the Franklin Pierce Law Center in Concord, New Hampshire. Dean Hutson has a record as a rear admiral, graduate of the University of Minnesota Law School, and has had a long and distinguished naval career, including being the judge -- Navy's judge advocate general during the administration of President Bill Clinton.

We're allotting 10 minutes for the testimony of each of you gentlemen, and then to be followed by questioning from the panel. Dean Hutson, we look forward to your testimony, and the floor is yours.

DEAN HUTSON: Thank you, Mr. Chairman, Senator Leahy, Senator Kennedy, Senator Cornyn. Thank you for inviting me. I request that my written statement be made a part of the record.

SEN. SPECTER: Your statement will be made a part of the record in full, as will statements of Dean Koh and Mr. Johnson.

DEAN HUTSON: Thank you, sir.

As Americans, we have been given many gifts by our creator and our forebearers. We hold these gifts in trust for our progeny and for mankind generally. One of these gifts is great military strength. This military prowess is enhanced by our legacy of strong advocacy for human rights for all human beings by virtue of their humanity alone, and by our long history of unwavering support and adherence to the rule of law.

These gifts come with a string attached. Like all gifts, there's a responsibility to husband them. We must not squander them. Rather, we must nurture them, refine them and pass them on in even better condition than they were given to us. Generations of Americans have understood this responsibility and have accepted it. In the wake of World War

II, Truman, Eisenhower, Marshall, Senator Bentsen and others fulfilled their part of that sacred trust. They had seen the horror of war, a horror that few of us have seen, but have only read about. They responded with programs like the Marshall Plan, and with international commitments like the Geneva Conventions. I believe that the Geneva Conventions are part of our legacy not unlike the Bill of Rights, the Fourteenth Amendment, and Brown v. Board of Education. They demonstrate the goodness of the United States. They also demonstrate our strength and our military might. Even in the midst of that most awful of human endeavors -- war -- we should treat our enemies humanely, even when we have captured them. To do so is a sign of strength, not weakness. To not do so is a sign of desperation.

I come here to speak in opposition of the confirmation of Judge Gonzales, because he appears not to understand that. He finds the Geneva Conventions to be an impediment, a hindrance to our present efforts, quaint and obsolete in important respects. His analysis and understanding of the Geneva Conventions, which I discuss in detail in my written statement, is shallow, short-sighted and dangerous. It's wrong legally, morally, diplomatically and practically. It endangers our troops in this war and future wars, and it makes our nation less safe.

My 28 years in the Navy tells me that his analysis of the Geneva Conventions and their applicability to the war in Afghanistan and the war on terror is particularly disturbing, because it indicates an utter disregard for the rule of law and human rights. Those are the reasons American fighting men and women shed their blood, and why we send them into battle. But if we win this battle and lose our soul in the process, we will have lost the war, and their sacrifices will have been for naught.

The Geneva Conventions have protected American troops from harm for many years. Our forces are more forward deployed than any other nations in terms of numbers of deployments, locations to which they're deployed, and the number of forces deployed. This has been the case since World War II, and will continue to be true. That's because -- because of that, there is no country for which adherence to the rule of law and to the Geneva Conventions is more important than it is to the United States. It's our troops that benefit. Original U.S. proponents of the conventions saw them as a way to protect U.S. troops from the enemy, not the enemy from U.S. troops. It's good for our

military if we -- it's not good for our military if we now throw them over the side just because some people believe they're inconvenient to the present effort. This is only the present war. It's not the last war, it's not even the next to last war.

Another important aspect of the Geneva Conventions is that it prepares us for the peace that will ensue. We can't so alienate our allies that they won't fight alongside us again. Nor should we embitter our enemies so that they will fight on longer and harder than they otherwise would, or be unwilling to relent, even though their cause is hopeless. Abrogating the Geneva Conventions imperils our troops and undermines the war effort. It encourages reprisals. It lowers morale.

I believe that the prisoner abuses that we have seen in Iraq, as well as in Afghanistan in Gitmo, found their genesis in the decision to get cute with the Geneva Conventions. At that point it became a no-holds-barred unlimited warfare -- not just in Abu Ghraib, but around the country.

And I remind the committee that we're conducting 40 or more death investigations in the course of the war on terror for detainees at the hands of their U.S. captors.

Our military doctrine has long been -- and I quote from the Department of the Army pamphlet -- "the United States abides by the laws of war in spirit and letter. Cruelty on enemy prisoners is never justified."

Twenty-eight years in the military taught me there are two indispensable aspects to military good order and discipline. They are the chain of command and the concept of accountability. Accountability means that you can delegate the authority to take an action, but you may never delegate the responsibility for that action. Young fresh-caught judge advocates know that government lawyers can't hide behind their advisor role to evade accountability for the actions that they recommend. The value of the chain of command is that what starts at the top of the chain of command drops like a rock down to the bottom of the chain of command, and subordinates execute the orders and adopt the attitudes of their superiors in the chain of command. It has always been thus, and that's the way we want it to be.

Government lawyers, including Judge Gonzales, let down the U.S. troops in a significant way by their ill-conceived advice. They increased the dangers that they'd face. At the top of the chain of command, to coin a phrase that we've heard



in the past, they set the conditions so that many of those troops would commit serious crimes. Nomination to attorney general is not accountability.

Only recently, in the face of the confirmation process, has the administration attempted to undo the damage. I have three thoughts on that. One is that I applaud the administration for doing that. The second is that it's a little late. We've had several years under the other policy. And last is that I don't see this as an exoneration of Judge Gonzales; rather, it's somewhat of an indictment. It's an acknowledgement of error.

Damage has been done, but it's never too late to do the right thing. If Judge Gonzales goes on to be the chief law enforcement officer of the United States after involvement in this, we will have failed to undo a wrong, but will have only exacerbated it. We're at a fork in the road. Somewhat ironically, this nomination has given the United States Senate an opportunity to tell the world what you think about those issues. What you do here will send a message, good or bad, to the world, and importantly to American armed forces and fighting men and women. Thank you, Mr. Chairman.

SEN. SPECTER: Thank you very much, Dean Hutson. We turn now to Mr. Douglas Johnson, executive director of the Center For Victims of Torture in Minneapolis -- previously served as a consultant to the human rights organization in Latin America, and to UNICEF and to the World Health Organization. We welcome you here today, Mr. Johnson, and look forward to your testimony.

MR. JOHNSON: Thank you, Mr. Chairman, and members of the committee, for the opportunity to be here to testify. It's a particular pleasure to testify to you, Senator Specter, because you were the primary champion of the Torture Victims Protection Act, which a couple of American clients of the Center for Victims of Torture worked with you on that, and are great admirers of your commitment to human rights. The Torture Victim Protection Act has been welcomed by human rights advocates around the world as a model of a new tactic in the arsenal of torture prevention.

The Center for Victims of Torture was established in 1985 as the first specialized institution in the United States to provide rehabilitation to victims of government-sponsored torture, and to work for abolition of torture. As CVT's

executive director for 16 years, I offer you our expertise and experience about the realities of torture.

It is CVT's policy, however, not to comment on the qualifications of specific individuals for government posts. But I think it's appropriate to be here, because in the general global human rights efforts and global human rights campaign there's a particular focal point on the minister of justice or the attorney general of countries who have at least three important roles in the prevention of torture. First is to establish policies and procedures that diminish the incentive to use torture, such as regulating the role that confessions play in the overall administration of justice. Secondly to prosecute or sanction torturers or persons who ill-treat detainees, and third to eliminate both the reality and the appearance of impunity among interrogators. These roles require a clear understanding of what torture is and why it is wrong, as well as very practical ideas on how to prevent its use.

I just want to note that the position against torture has been a very strong bipartisan effort by this Congress, and by administrations for many years. And one very notable measure of that was that the convention against torture was passed by this Congress and ratified, and no other human rights treaty has been ratified so promptly. That's an important measure because torture has a very human cost. The Center for Victims of Torture has provided care for more than 7,500 people from 60 different nations. Although there are difficult physical symptoms with the form of torture they endured, there's a remarkably common pattern of profound emotional reactions and psychological symptoms that transcends cultural and national differences. Its effects can include, but are not limited to, besides organ failure and death, emotional numbing, depression, disassociation, depersonalization, atypical behaviors such as impulse control problems, and high risk behavior, psychosis, substance abuse, neurophysiological impairment such as the loss of short-term and long-term memory, perceptual difficulties, the loss of ability to sustain attention or concentration, and the loss of the ability to learn. The main psychiatric disorders associated with torture are post-traumatic stress disorder and major depression.

While it is important to recognize that not everyone who has been tortured develops a diagnosable mental disorder, it is equally important to recognize that for many survivors the symptoms and after effects of torture endure for a lifetime.

Torture is said to be one of the most effective weapons against democracy, as survivors usually break their ties with their community and retreat from public life. And in that regard I would like to acknowledge the presence of a number of victims of torture here in the room today, and the organization they have pulled together called TASK, which represents a counter to that often frequent retreat from public life.

And the memoranda written by and also apparently solicited by White House Counsel Gonzales are replete with legal errors, which the other two members of the committee will describe, but also we believe with political miscalculations and moral lapses. They disregard the human suffering caused by torture and inhumane treatment. They are based on faulty premises, even fantasies, about the benefits and payoffs of torture. What is striking about all of these memorandum is the lack of the recognition of the physical and psychological damage of torture and inhumane treatment.

The assumption behind the memoranda, and particularly the Bybee memorandum and the later report of the working group on interrogation, is that some form of physical and mental coercion is necessary to get information to protect the American people from terrorism.

These are unproven assumptions based on anecdotes from agencies with little transparency. But they have been popularized in the American media by endless repetition of what's called the ticking time-bomb scenario. Based on our experience at the center with torture survivors and understanding the systems in which they have been abused, we believe it is important that these discussions not be shaped by speculation but rather through an understanding of how torture is actually used in the world. From our understanding, we have derived eight broad lessons, and those are first of all torture does not yield reliable information. Secondly, torture does not yield information quickly. Third, torture has a corrupting effect on the perpetrator. Fourth, torture will not be used only against the guilty. In fact, fifth, torture has never been confined to narrow conditions. Once it's used, it broadens. Psychological torture results in long-term damage. Stress and duress techniques are forms of torture. And finally, number eight, we could not use torture and still retain the moral high ground.

The cost to America of abandoning strict opposition to all forms of torture are far-reaching, from the disillusionment

and fear of individuals on the one hand to complications in our ability to conduct foreign policy on the other.

It is up to all of us as Americans, but particularly to members of the Senate and to the U.S. attorney general to be clear that torture is a line we will not cross under any circumstances or for any purpose. It is imperative that the attorney general is in agreement with American values and will use the full scope of American and international law to prevent torture and prosecute torturers.

To that end, I respectfully call on the Senate Judiciary Committee to keep torture on its agenda and to require a routine report from the Department of Justice on its work to stop and prevent the use of torture. I ask the committee to be vigilant in your oversight until it is clear in both our tactic and explicit policies, and in our actions, that the U.S. is back on course and is in full compliance with national and international law and American values.

When speaking on the Senate floor in support of ratification of the convention against torture, Kansas Senator Nancy Kassebaum said, quote, "I believe we have nothing to fear about our compliance with the terms of this treaty. Torture is simply not accepted in this country, and never will be." Let us also make it true today. Thank you.

SEN. SPECTER: Thank you very much, Mr. Johnson. We now turn to Dean Koh, the dean of the Yale Law School, having been named there earlier -- well, in July of last year. He has taught at the Yale Law School since 1985 in international law, served as assistant secretary of State, was a U.S. delegate to the United Nations Human Rights Commission and the U.N. Committee on Torture. Welcome, Dean Koh, and we look forward to your testimony.

DEAN KOH: Thank you, Mr. Chairman. Thank you, members of the committee, and especially thank you, senators, for your kind remarks about my family. Let me say in particular, Mr. Chairman, we at Yale Law School are very delighted to have you in this important constitutional role in our country.

SEN. SPECTER: I'm just sorry I wasn't there to take your course, Dean Koh. I would have been better prepared for the job.

DEAN KOH: Thank you. Well, let me give you a little synopsis of what you might have gotten had you taken it. (Laughter.) As I mentioned, I have twice been in the U.S. government. I served in the Clinton administration as the assistant secretary for human rights. But previously I was in the Reagan administration as an attorney at the Office of Legal Counsel, which is the very office which has generated these memoranda.

Let me say that I don't appear today to advise you on how to vote. Your decision as to whether this candidate deserves confirmation turns on many factors, on which you are the experts, and may involve qualifications and positions that I haven't reviewed.

But I do appear today because I want to comment on Mr. Gonzales's positions regarding three very important issues. I think these are issues of the highest significance in American life. And these are issues on which I do have legal expertise and government experience. They are first the clear and absolute illegality of torture and cruel, inhuman and degrading treatment. Second, the nonexistence of the president's constitutional powers to authorize torture and cruel treatment by U.S. officials, what Senator Leahy has been calling the "commander in chief override." It does not exist, as a matter of constitutional law. And, third, the broad applicability of the Geneva Conventions on the laws of war to alleged combatants held in U.S. custody. This broad applicability has been for the benefit of our soldiers. The more that we ensure broad applicability of the conventions to others, the more our own soldiers are entitled to protection.

With regard to each of these, I think the legal position is clear. As attorney general, Mr. Gonzales has said that his first allegiance would be to uphold the Constitution and laws of the United States. That would mean he would strictly enforce the laws banning torture, he would strictly enforce the ratified treaties regarding torture in the Geneva Conventions, and he would ensure that the president abide by the constitutional principle of checks and balances. But I think more fundamentally he has to assure that no one is above the law, including the president, and that no one is outside the law, whether they're an enemy combatant or held in a place like Guantanamo or outside the United States. And I think that there's been a concern that's raised about Mr. Gonzales's record, and which continues through the hearing today. It says some of the statements he's made and some of the things that

he's tolerated have created the impression that the president is above the law or that certain individuals live outside the law as extralegal persons, because they are called enemy combatants, or because they're being held in rights-free zones, such as Guantanamo.

Let me just address these three issues, starting first with the torture memo, the Bybee memo. As you mentioned, Senator Specter, I presented United States' report on our compliance with torture in Geneva in 1999 and 2000. And at that presentation, I told the United Nations as a country we are unalterably committed to a world without torture. We had cleared through all the agencies of the U.S. government a statement of zero tolerance, a zero tolerance policy. And the real question is how did we move from the zero tolerance policy of 2000 to the permissive environment that seems to have been created in the last few years.

Now, I think the answer is partly shown by the Bybee memo. And having worked in the Office of Legal Counsel, I'm very sympathetic with the pressures that people are under in drafting opinions like this. Nevertheless, in my professional opinion as a law professor and a law dean, the Bybee memorandum is perhaps the most clearly legally erroneous opinion I have ever read. It has five obvious failures.

First, it asks how close can we get to the line, when in fact it's supposed to be enforcing a zero tolerance policy.

Second, the way that it defines torture would permit many of the things that Saddam Hussein's forces did during his time as not torture. Just for example, the White House website lists that beating, pulling out a fingernail, burning with hot irons, suspension from ceiling fans were all acts of torture committed by Saddam Hussein's forces. Nevertheless, under the Bybee memorandum, if they didn't cause serious organ failure or death they would not constitute torture.

Third, as I said, the memo grossly overreads the president's constitutional power to order torture. If the president has a constitutional power to order torture in the face of a criminal statute preventing it passed by Congress, it's not clear why he could not similarly order genocide or other kinds of acts.

Fourth, the memorandum says that executive orders -- executive officials can escape prosecution if they are carrying

out the president's orders as commander in chief. This is the following orders defense which was rejected in Nuremberg and is at the very basis of our international criminal law.

And, finally, an important point, the Bybee memo essentially is very tolerant with regard to cruel, inhuman or degrading treatment. A convention against torture and cruel, inhuman and degrading treatment is read to permit various kinds of cruel, inhuman and degrading treatment. And even today there was some lack of clarity in Mr. Gonzales's answer about whether U.S. officials are barred from cruel, inhuman or degrading treatment.

I think that if this kind of reasoning is left unchallenged it could be used to justify atrocities of the kind of we saw at Abu Ghraib; where lower executive officials felt a license to be cruel, inhuman or degrading to people in their custody.

Now, some have said that the August 1st memo is a lawyer setting out options for their client. But I think as lawyers, those of you have served know that if a client asks a lawyer to do something which is flatly illegal, the answer is no. It's not, "Here's how we can justify it." So I believe that this is a stain on our law, a stain on our national reputation -- a legal opinion that is so contrary to a zero tolerance policy, which has a definition of torture that would have exculpated Saddam Hussein, that leaves the commander in chief power to remove Congress as a check on torture that turns Nuremberg on its head and that gives government officials a license to be cruel is wrong from the beginning.

If the counsel for the president had received such an opinion, you would have expected him to do at least one of two things.

First, reject it on the spot and send it back. Or, second, send it to other parts of the government and have them give a second opinion, particularly the State Department which I believe following the policies in the U.S. report on the Convention Against Torture would have said that the opinion is flatly wrong. Instead, what happened, as you heard, was that that opinion was allowed to become executive branch policy, was incorporated into the DOD working group report, and remained as an executive branch policy for some two and half years, during which time I believe that a permissive environment was inevitably created.

Now, I welcome the very strong statement that Mr. Gonzales made in finally repudiating this analysis. But I think he also was begging the question of whether the parts of the memo that weren't explicitly replaced -- namely about the president's constitutional powers to order his subordinates to commit legal -- to commit torture -- should be repudiated. At the beginning of the testimony, Mr. Gonzales said those parts have been withdrawn. By the end he said he repudiated it. I think he should say, "I reject them because they are legally wrong and they never should have been put out there in the first place." I don't think that our nation's chief law enforcement officer should tolerate ambiguity on a matter that is so essential to our national values. I think Mr. Gonzales should repudiate all elements of the memorandum, ask for withdrawal of the Defense Department's working group report. And I also with Mr. Johnson it's a very good idea to have a regular report about what we're doing to root out torture within the executive branch.

With regard to the commander in chief powers, a very simple point. The statement is made, "Any effort by Congress to regulate the interrogation of battlefield combatants would violate the Constitution's vesting of the commander in chief power in the president." If that were strictly true, large sections of the Uniform Code of Military Justice would also be unconstitutional. I think that's an overbroad position. I don't think it's sustainable as a matter of law, and I think it should be repudiated definitively.

Remember that the attorney general has a duty not just to serve his client, but to preserve the Constitution's system of checks and balances. I think that to ensure that the president is not above the law, Mr. Gonzales should repudiate the constitutional theory that's put out there. A very simple question which you could have asked him today was --

SEN. SPECTER: Dean Koh, your red light is on, if you would conclude your current thought, we would appreciate it.

DEAN KOH: A simple question you could have asked him today is: Is the anti-torture statute constitutional? If the answer to that question is yes, then it cannot be overridden by the president's commander in chief powers.

And the final thought, the Geneva Conventions. I believe that this point has been made very well. The Geneva



Conventions do apply broadly, and the fact that the administration chose I think through Mr. Gonzales's recommendation not to apply the Geneva Conventions in Afghanistan was an error which I think that Secretary Powell properly challenged. Thank you.

SEN. SPECTER: We will -- thank you, Dean Koh. We will now proceed with a round of 10 minutes each. It's late in the afternoon, and we have had extensive testimony from Attorney General-designate Gonzales dealing with the specifics of the issues which he faced, which the country faced, and now with three individuals who are more perhaps academicians, or at least in part academicians, we could explore a subject which we have not taken up, a delicate subject, and that is the issue of the so-called ticking-bomb case on torture. There are some prominent authorities -- and I do not subscribe to this view, but only set forth for purposes of discussion -- that if it was known probable cause that an individual had a ticking bomb and was about to blow up hundreds of thousands of people in a major American city that consideration might be given to torture. Judge Posner, a very distinguished judge on the Seventh Circuit, has commented that this is worth considering, or perhaps even more positively than that. Professor Dershowitz has written extensively on the subject, has come up with a novel idea of a "torture warrant," and that runs through some of the considerations on interrogation techniques not to be decided by the people at the base level, but when dealing with higher official trying to get something out of the ranking al Qaeda person that an escalation of tactics ought to be left to more mature authorities, perhaps even -- well, higher authorities than the federal chain of command.

The Israeli Supreme Court has opined on the subject by way of dictum -- as they put it recognizing in certain circumstances Israeli interrogators may be able to -- who use torture -- not saying that it ought to, but those who do may be able to employ the defense of necessity to save lives of a so-called ticking time bomb or other such imminent threat. Dean Koh, start with you: Are considerations for those tactics ever justifiable, even in the face of a ticking-bomb threat? DEAN KOH: Well, senator, you're a former prosecutor, and I think that my approach would be to keep the flat ban, and if someone -- the president of the United States -- had to make a decision like that, someone would have to decide whether to prosecute him or not. But I don't think that the answer is to create an exception in the law, because an exception becomes a loophole, and a loophole starts to water down the prohibition.

I think what we saw at Abu Ghraib is the reality of torture. I've had the misfortune to visit many torture dens in my life. Many of them I am sure were justified on emergency national security concerns, and at the end of the day you have places where they are just places where people are routinely mistreated -- and not for any broad national security purpose.

SEN. SPECTER: That sounds essentially like the hypothetical question defense -- if the president does it, that's a prosecution matter. I don't know about that.

Dean Hutson, what do you think? Ever an occasion to even consider that?

DEAN HUTSON: I agree with Dean Koh that it is always illegal. Now, you may decide that you are going to take the illegal action, because you have to.

But two points. One is that that's not necessarily the situation -- or it's not necessarily -- it's not at all the situation we're talking about here with Gitmo or Abu Ghraib or other prisons. There's no indication that there was a ticking bomb anyplace. The other is that you pose a question in which there is by definition in the question not sufficient time to use more effective methods of getting information -- good guy/bad guy rewards and punishments, you know, those kind of things which you are much more capable of getting valuable information. A third difference is that by the hypothetical you are dealing with a particular individual. You're not dealing with 550 people at Gitmo, or however many people at Abu Ghraib. So it's an interesting academic question. We've all debated it. But I don't think that it is the sort of question that the Bybee amendments, or excuse me, the Bybee memo for example addresses.

SEN. SPECTER: Dean Hutson, there's no doubt that it wasn't involved at Abu Ghraib in any of the issues which we've taken up, but anybody who has watched on C-SPAN since 9:30, we're off on a long day -- might deserve a little academic discussion, even if it's only highly theoretical. And it's pretty tough to advocate to advocate torture under any circumstances, even with the ticking bomb. So I can understand the reticence of the witnesses, because I have the same reticence. What are your views, Mr. Johnson?

MR. JOHNSON: Well, the Supreme Court concluded that the necessity was a defense and prosecution. It could never be

turned on its head to be made a policy moving forward. And of course the Bybee memo has the same problem. It takes a question of law about how to prosecute someone for torture and turns it into proactive advice on what is allowed and what's not. And that's the moral problem with the Bybee amendment.

On the specifics of the ticking time bomb, I think that it's very overblown in our imaginations, and it's very rife with what I could only call fantasy and mythology. The number one issue, as I said, is that torture is unreliable to get information. We look at our clients -- nearly every client we had confessed to something. They confessed to some crime, they gave up some information, they gave up the name of an innocent friend. What they said was, "I would do anything," "I would say anything to get it to stop."

And one of the major problems with torture from a legal perspective and especially from an interrogation perspective is that it produces so much extraneous information that it actually distracts from good investigation.

But, secondly, the second part of this, which is often the question of fantasy, is that we have to do it, because the bomb will go off in the next hour, and if I don't agree for the next hour, it will go off in the next five minutes, would you do it there? It actually takes time to make someone break, it takes strategy to make someone break.

One of the very disturbing things I find in the memorandum is to know that some of the techniques that were used in Gitmo, such as water-boarding, were being used on our own troops, supposedly to train them to resist from torture. I've talked to American soldiers who've gone through that training and who have been required to be engaged in that kind of activity, and they told me that it's taken them 15 years of therapy to get over it. So I'm very disturbed to think that it's any part of the practice of our soldiers at this point in this day and age. But at the same time we know it happens. I know of stories in Argentina where supposedly the criminal -- the professional criminals go through training to resist torture over the 48 hours they need before they get access to their lawyer. Everything I've heard about the operational sophistication and the commitment of al Qaeda would lead me to believe that they go through the same training. So the notion that torture acts quickly to deal with the ticking time bomb is also a fantasy.

SEN. SPECTER: Well, it may well be fantasy, and we hope that it never arises --

DEAN KOH: Senator, might I just add that --

SEN. SPECTER: Excuse me, I'm in the middle of a sentence, Dean Koh. Let's hope it is fantasy. And as we had examined interrogation techniques, we really haven't gotten into the subject matter today of the suspect as -- or the person subject to interrogation as a relevant factor, or the quality of the information that that person might have, or the sophistication or judgment if it went to the secretary of Defense or the undersecretary, where there is more time to have an interrogation technique. And let us hope that no president ever has to face a decision, or any official at any level. But there are gradations and complications here which do not provide any easy answers, far beyond the scope of what we have heard today. My red light is on, so I ask no more questions. But you were in the middle of a sentence, Dean Koh --

DEAN KOH: I was just saying that the new OLC opinion of last week withdraws the necessity defense and so would not function to permit the invocation of necessity as a reason for torture.

SEN. SPECTER: Senator Leahy?

SEN. LEAHY: Thank you, Mr. Chairman. Admiral Hutson. Dean Koh, Mr. Johnson, I want to thank you for being here. You sat through a long day. I hope though it has been of interest.

I would also hope -- and I apologize for my voice, which is just about done -- I would hope that the senators would read the material you submitted. I read it and I found it fascinating. I've learned from it, obviously, sent most of it around to members of my staff, those who haven't read it. They might read it -- it's well worthwhile.

Dean Koh, you heard Judge Gonzales's testimony today. I asked him a number of questions regarding his views of executive power. I asked him if he agreed with the legal conclusion in the August 1, 2002 memo by Assistant Attorney General Jay Bybee, the president has authorities as commander in chief to suspend the torture laws and immunize those who commit torture on his order. I never really did get a yes or no answer on that, but can a president override our laws on torture and immunize the person who did the torture?

DEAN KOH: No.

SEN. LEAHY: That's a good answer. I happen to agree with it.

Now, I asked Judge Gonzales about the administration's claims regarding enemy combatants. The president has claimed unilateral authority to detain a U.S. citizen who is suspected of being a terrorist, hold him indefinitely incommunicado, no access to a lawyer and so on. He simply has this authority with respect to U.S. citizens, both abroad and here. Judge Gonzales said the Supreme Court upheld this in Hamdi. Of course Hamdi court didn't decide that. They simply reached a conclusion that the Congress had authorized this. Do you believe that the president has authority as commander in chief to lock up a U.S. citizen arrested in the United States and hold him indefinitely without access to counsel or the courts?

DEAN KOH: No, and not when a civilian court is open. I was surprised by the answer, because I think if you look at the Hamdi decision, the opinion that you are citing, Justice O'Connor's opinion, is a plurality decision. It doesn't say that he has a right to hold somebody indefinitely. That very issue is being litigated before the District of South Carolina in the Padilla case on remand. And also I think in the oral argument in those cases Justice Stevens asked the solicitor general how long would you hold the person, and the answer was for the duration of the war. And he said, "What if it's a 100-years war?" And then the government lawyer backed away from the assertion. So I don't think they were claiming at the time that there was a right to indefinite detention, and I don't think the Supreme Court gave them a right to indefinite detention.

SEN. LEAHY: And there's also a -- following a question one of the other senators asked, let's say the president followed Secretary Powell's advice, declared the Geneva Conventions applied to the conflict in Afghanistan -- what effect would have had on our ability to prosecute captured al Qaeda or Taliban fighters for war crimes?

DEAN KOH: Well, I think what was proposed, which I think would have made sense, was for everyone to get a hearing, as required by Article V of the tribunal -- of the Geneva Conventions. Everyone who is taken into captivity ordinarily gets a hearing under the Geneva Conventions, and thousands of

these hearings have been given in Iraq, and were also given in Vietnam. That's what was not done.

I think particularly with regard to the Taliban, they were acting as essentially the army of Afghanistan, and I believe that they should have been given POW status. I think that there was some confusion in the question today about whether, quote, "Geneva applies or not." Geneva may apply in the sense that everybody gets a hearing to find out what their status is, but some of them may not be POWs.

SEN. LEAHY: That's what -- thank you, that's what I was looking for. We follow certain standards, whether the other side does or not, we do. We need to comply with Geneva whether our enemies do or not -- is that not the logic of Geneva?

DEAN KOH: Broad applicability of the logic. We have been the ones who are saying it should apply broadly, because we want our troops to have a strong presumption of protection. Afghanistan was the first time in which we said that it didn't apply to a conflict.

You were also asking questions about rendition. Once it was said that Geneva Conventions did apply in Iraq, there was the danger that people then would be removed from Iraq as a way of bringing them outside of the scope of the Geneva Conventions. The bottom line, senator, is we have tried not to create ways in which people can be taken in and out of the protection of the conventions, because that might happen to our troops.

SEN. LEAHY: Well, and if we have somebody who is treating our troops inhumanely, or others, we can also bring about -- eventually bring about prosecutions of them as war criminals, can we not? There's a lot of tradition of that.

Admiral, the January 2002 draft memo for the president -- this was the one signed by Judge Gonzales -- argued the war against terrorism is a new paradigm, renders obsolete the Geneva Conventions', quote, "strict limitations in questioning of enemy prisoners." But we talked about the Army field manual. That makes it perfectly clear that POWs can be interrogated. Is that not correct?

DEAN HUTSON: That's absolutely right, senator. A couple of thoughts. One is that all the wars are new paradigms when you first start to fight them. You know, there's new weapons systems, there's new enemies, there's new tactics,

there's new strategy. So the fact that it's a new paradigm doesn't necessarily change things.

The other thing is that the Geneva Conventions place on the detainee an obligation to provide certain information. It does not place on the capturer a limitation on the questions or the numbers of questions or the numbers of times to question -- this isn't a Miranda kind of situation. You can keep asking questions. It does limit the torture, cruel, inhuman degrading kinds of ways that you may ask questions.

If by "obsolete" Judge Gonzales meant that we are going to have to use more kinds of techniques, harsher techniques, more aggressive techniques, torturous techniques, then I disagree with him very strongly on that. If he is just saying that we need to throw it over the side because we're dealing with terrorists and we can't ask any question beyond name, rank, serial number, then you're just wrong on the law. You know, it's one or the other. You know, it's either wrong on the law or he's advocating techniques that I would not support.

SEN. LEAHY: From a lawyer's -- military lawyer's perspective, could we have avoided what we see in Afghanistan, Iraq and Guantanamo?

DEAN HUTSON: Absolutely. It goes back, senator, to what I think I said in my statement, written and oral statement, about the chain of command. Those soldiers that we saw in the pictures, the people that are being investigated otherwise, have picked up the attitude that started at the top of the chain of command. And if the attitude that started at the top of the chain of command was they may be terrorists, they may be evil-doers, but they are human beings and we will treat them with the dignity and respect that Americans treat human beings, we would not have seen what we saw. Rather, the attitude of the top was they are terrorists, so different rules apply without really explaining what the rules were that applied. And, as Dean Koh said, they ended up -- or I guess Mr. Johnson -- they ended up in this never-never land where nothing applied, and then we saw what happened.

SEN. LEAHY: We have some members of Congress in both parties -- have suggested we have some kind of an independent -- purely independent investigation of what happened here. Is that your position too? DEAN HUTSON: Absolutely, it is, senator. Judge Gonzales referenced several times the number of

investigations that are going on, as if that somehow fixed the problem. And, you know, if 10 investigations is good, then 20 would be even better, and 30 better than that. That's not the point. The point is that we need an investigation, a comprehensive investigation, not unlike the investigation that perhaps Admiral Gehman did in the Challenger disaster in which the investigating body has subpoena power, the power to administer oaths, which raises the specter of perjury, and is told to go wherever their nose leads it -- not to look at the few bad apples. You know, this has been -- atrocities have been committed by a few bad apples, you know, go out and demonstrate how that happened. They need -- and if it goes to the E Ring, then it goes to the E Ring. If it goes to the Office of Legal Counsel, then it goes to the Office of Legal Counsel. But when you put them in a box with a series of investigations to look at junior enlisted personnel, you are never going to find what happened.

SEN. LEAHY: Thank you. And, Mr. Chairman, you asked the question that Mr. Johnson has been asked, basically how effective torture is, and I think he gave a very good answer from his experience. Most people being tortured are going to say whatever you want to stop the torture. And thank you, Mr. Chairman. And, again, I compliment you for the hearing you held today.

SEN. SPECTER: Thank you very much, Senator Leahy.

Senator Cornyn?

SEN. CORNYN: Thank you, Mr. Chairman. Mr. Johnson, Mr. Koh, Mr. Hutson, thank you for being here with us today. I just want to ask for whether you agree or disagree with this proposition to begin with, and then we'll get into some more questions. Do you agree or disagree that all lawful means to gather actionable intelligence that is likely to save American lives should be permitted? Let me say that again. Do you agree or disagree that the United States government should use all lawful means to gather actionable intelligence that's likely to save American lives?

DEAN HUTSON: I agree.

SEN. CORNYN: Dean Hutson?

DEAN HUTSON: I agree.



SEN. CORNYN: Dean Koh?

DEAN KOH: I agree with lawful means no including torture or cruel, inhuman or degrading treatment.

SEN. CORNYN: Exactly. That's implicit in the question, but thank you for being specific. Mr. Johnson? MR. JOHNSON: I agree. And my concern is that there's been such a fascination with the supposed effectiveness of forms of torture and duress that all lawful means in fact have not been used.

SEN. CORNYN: But as far as the proposition goes, all lawful means, as qualified or amplified I should say, by Dean Koh and you, Mr. Johnson, and Dean Hutson, you would agree with that proposition, would you not, sir?

Well, and that's the thing. I think we all agree with that. I mean, certainly we do on on the committee, and as I heard Judge Gonzales testify today, that's what he said his position was and what he believed the president's position was.

But let me get to an area where maybe there is -- well, I know there's disagreement, because we've already talked about it some here today -- not with you, with these witnesses. But, first of all -- and I'd like to maybe start with Dean Koh, and then Dean Hutson, and then ask Mr. Johnson some other questions. First of all, Mr. Johnson, let me just -- just as a background matter, are you a lawyer by profession, sir?

MR. JOHNSON: No.

SEN. CORNYN: Okay, well, I won't ask you any legal questions.

MR. JOHNSON: Please.

SEN. CORNYN: It's not every day that you get to ask the legal questions of the deans of -- a couple of law school deans, and Mr. Chairman, they wouldn't let me into Yale Law School, so I didn't even bother trying to apply, because I wasn't qualified. So it's a great honor to be here with --

DEAN HUTSON: We would have been glad to have you at Franklin Pierce Law Center. (Laughter.)

SEN. CORNYN: Well, it's great to be here with such distinguished legal minds. But, you know, I asked earlier Judge

Gonzales -- I think it was -- whether lawyers disagree and -- about even the matters as important as to what you testified to today, Dean Koh and Dean Hutson. And we already, I believe, have established that there are legal scholars and international law experts who hold a contrary opinion to the one you've expressed today, for example, Dean Koh, with regard to the applicability of the Geneva Conventions to terrorists. Would you concede the point that there are respectable legal scholars who hold a contrary opinion?

DEAN KOH: Yes, and I think you have to define exactly what you mean -- the applicability to al Qaeda, the applicability to Taliban? There's a different nose count on each one. SEN. CORNYN: I understand your distinction. But let's talk about al Qaeda first. But do you -- and you take the position that Geneva applies to al Qaeda -- is that correct, sir?

DEAN KOH: I take the position that Geneva applies to people who are captured, and then a tribunal could quickly determine that someone is al Qaeda, and as for example in the case of Moussaoui he could then be turned over to a criminal proceeding.

SEN. CORNYN: But, for example, if there is a status hearing to determine the status of an enemy combatant, and they are determined to be at that status hearing a member of al Qaeda, would they be entitled to the protections of the Geneva Convention in your opinion, Dean Koh?

DEAN KOH: Well, they fall under Geneva, but they are not POWs, and they should then be treated as common criminals and prosecutors.

SEN. CORNYN: But nevertheless entitled to humane treatment, is that correct?

DEAN KOH: Yes.

SEN. CORNYN: And, Dean Hutson, do you have a contrary view, or do you take the same position?

DEAN HUTSON: I take the same view. You know, one of the issues I think here, senator, is that -- at least in my mind one of the issues here is that -- I don't want to sound pedantic, so forgive me, but you know law isn't practiced in a vacuum. It's practiced in real life. And sometimes whether or

not lawyers agree or disagree about the gray areas in the middle -- I don't think there's necessarily a gray area in the middle -- there are other factors, like protecting U.S. troops, that have to be taken into consideration in making the decision about whether or not you are going to apply the Geneva Convention or the role the conventions are going to take. And I think that it's naive to say, Well -- not you are but others -- naive on the part of others to say, Well, we are going to very narrowly limit this, because we're clever lawyers and we can figure out a way to get around this, because I think that that in the end risks U.S. troops in this or future wars.

SEN. CORNYN: Well, Dean Hutson, let me pursue that just a second. Isn't it naive to assume that al Qaeda, people who employ suicide bombing attacks, who attack innocent civilians, will have any regard whatsoever for the international forms of conflict?

DEAN HUTSON: I do not think that they will have any regard for the international forms of conflict. Nor do I think that if they are suddenly going to say, Oh, gee, if we start doing -- conducting or behaving in other ways, we'll get the benefit of being POWs. If we start wearing uniforms everything is going to be okay. You know, I don't think it makes a difference particularly one way or the other.

SEN. CORNYN: So it wouldn't influence their decision to treat our troops, were they captured, in any particular humane --

DEAN HUTSON: Well, I think --

SEN. CORNYN: -- complied with the Geneva Convention?

DEAN HUTSON: I think that it may. I think Senator McCain said that he thought that it did in Vietnam. I think that --

SEN. CORNYN: Vietnam is -- obviously we were at war with another nation-state, and one that wore a uniform with insignia, and they had a chain of command -- all the criteria by which the Geneva Convention is determined to apply -- did we not?

DEAN HUTSON: Did not -- they did not necessarily comply with the law of war, which is one of the factors that is determinative of POW status.

DEAN KOH: I think we're moving to a definitive resolution of these issues, but I think that these issues are going to continue to be disputed and resolved in the courts.

SEN. CORNYN: Well, let me just mention a group of other distinguished lawyers. Professor W. Thomas Malinson (ph), who has written in Case Western Reserve Journal of International Law; Professor Alan Rossis (ph), who has written on this subject, Professor Ingrid Detter, Professor Gregory N. Travalio (ph) -- and I hope I pronounce that name correctly. And I won't go through a whole long list, but you would acknowledge that there are others, other legal scholars, people who have written in this area, who agree with Professor Wedgwood and disagree with you on the application of Geneva to al Qaeda. Would you concede that, Dean Koh?

DEAN KOH: I think the question, senator, is whether Afghanistan can be removed from the scope of the Geneva Conventions? And I don't know that anybody agrees with that.

SEN. CORNYN: So you wouldn't agree -- you wouldn't concede that there are a fairly lengthy list of distinguished legal scholarship that holds that al Qaeda fighters are not entitled to the protections of the Geneva Convention? You wouldn't concede that?

DEAN KOH: I think this is a point that was made in your Washington Times op-ed, quoting Mr. Malinowski from Human Rights Watch. But I think as he pointed out in his letter of response, the danger is an assertion that an entire conflict is outside the scope of the Geneva Conventions. If that were true, then U.S. soldiers participating also would not enjoy Geneva Convention protections. So I think the solution is to bring all the combatants who are captured in, to give them hearings, decide who are POWs and who ought to be treated as common criminals, and that al Qaeda members could well be among those who are treated as common criminals.

SEN. SPECTER: Senator Cornyn, would you like one more round?

SEN. CORNYN: I would like two more minutes, and I'll be through.

SEN. SPECTER: Dean.

SEN. CORNYN: Thank you, sir. (Laughter.) Well, gentlemen, you know, regardless of the disagreement among lawyers on this particular issue with regard to the application of the Geneva Convention, and regardless of whether you say Geneva doesn't apply or that Geneva does apply but al Qaeda fighters are exempted from the requirement of Geneva's protections with regard to POW status, would each of you -- would you agree, Dean Koh, for example, that, you know, that some very important lawyers, namely federal judges, have decided in three different cases that the president's position and Judge Gonzales's position on the Geneva Convention is correct? Are you aware of that?

DEAN KOH: If one of those cases, if the Padilla case -- that case was reversed by the Second Circuit. If another case --

SEN. CORNYN: But for lack of jurisdiction, right? And it's not one of the ones I was referring to.

DEAN KOH: And I think you also need to include into the mix Judge Robertson's opinion in the D.C. Circuit which has in part suspended the military commission proceedings precisely because the Geneva Conventions, and --

SEN. CORNYN: Is that the one that's on appeal right now?

DEAN KOH: Yes. And then --

SEN. CORNYN: Well, for the record, the ones I'm referring to are the Arnaut (ph) case, the Lindh, John Walker Lindh case --

DEAN KOH: -- a plea bargain.

SEN. CORNYN: Well, I beg your pardon, sir, it's 212 Fed. Sup. 2d 541. It's not a plea bargain. This is the one where he claims immunity from prosecution by virtue of his being protected by the Geneva Convention and a POW, but the court held he was not entitled to protection of the Geneva Convention.

Mr. -- or Mr. Chairman, given the late hour and my commitment to you not to go much farther than a couple more questions, we'll save all these interesting discussions perhaps for a later time, but thank you.

SEN. SPECTER: Senator Cornyn, if Yale had an opportunity to consider your application nunc pro tunc, and seen you spar with the distinguished dean of the Yale Law School, I think you would have been admitted beyond any question. But I don't know had you gone to Yale you would have been the superb questioner that you are today. (Laughter.) But I -- Senator Leahy and I are sort of chained to the mast. That's the rule of being ranking and chairman. But you're a free agent, so your presence here is extraordinarily commendable, and I think including your introduction you may have outranked Senator Kennedy on tenure of speeches. That concludes the hearing. Thank you very much, gentlemen.

END.