

# SENATE ARMED SERVICES TORTURE HEARING, FOUR (HAYNES)

Haynes: How our country deals with this unprecedented threat. This is as it should be. The end of this can only come with history's judgment of how our Administration served in protecting America. We know that America's enemies are relentless. I look forward to watching our nation's leaders to advancing our nation's security and freedom.

[Alright, Levin, just like you did to Ickes.]

Levin: In July 2002, Shiffrin, contacted JPRA asked about SERE techniques. Did you ask him to obtain info on SERE.

Haynes: Six years ago. Memory not perfect. What I remember is a govt wide concern about poss of another terrorist attack. A widespread belief that the people captured in war on terror. [filibuster filibuster 9/11 9/11 9/11] As Chief legal officer I was interested and concerned. I inquired generally about where sources of expertise might be. Shiffrin would have been the person I asked for that kind of info.

Levin: Specifically about SERE.

Haynes Late summer, did get info (refreshed memory form doct).

Levin: Don't remember about SERE.

Haynes: Not specifically.

Levin: Addington, Gonzales, Yoo, Philbin, and Rizzo. Did this request to Shiffrin come from that group?

Haynes: Six years ago. a long time. I had ten meetings a day. I met with many groups. I met with many lawyers. To key into one particular meeting.

[Does this remind anyone of Scooter Libby's defense?]

Levin I wasn't asking that. Do you remember if it came from that group?

Haynes: No sir.

Levin: Tab 2. Do you remember seeing this memo at the time?

Haynes: Not at the time, But I've seen it before, and I've seen it a long time ago.

Levin: Tab 3. Did you see that? Do you remember whether you saw it?

Haynes: I don't remember when I saw this.

Levin: Another attachment to Baumgartner's memo. Tab 4. Did you obtain info from Shiffrin on SERE training. Did you see Egrisseg's memo?

Haynes: Yes.

Levin: Do you remember whether you saw this memo?

Haynes: I don't remember when I saw this?

Levin: what would you have done when you got it? Do you remember doing something with it?

Haynes I don't remember doing something with this. What I recall was the environment I described earlier. I can't remember what prompted my concern. There may have been some other catalyst.

[missed some]

Haynes: My memory is not great. If I were just to discuss any further I would have to talk about classified info.

Levin Would you remember better if it was a classified session?

Haynes I wouldn't be able to discuss it. Did I ever discuss SERE techniques with others in the Admin, the answer is yes.

Levin What was the gist of those conversations.

Haynes I couldn't go into jist without going into classified information. I cannot discuss it further without getting into classified information.

Levin: You say you don't remember any more clearly than what you said. I don't know what going into classified session would add.

Graham: Try to put this in context of this puzzle. Goal was better info.

Haynes: Goal was not Gitmo. Goal was to understand what capabilities country had to elicit info from terrorist who attacked and might attack the country.

Graham: the reason was trying to get better infor from HVTs.

Haynes: That would be an objective of people involved in interrogation. Yes sir.

Graham: New programs not on the books that would allow us to get better infor.

Hayes; No I was a senior lawyer, the senior lawyer in the Dept. The detention and questioning of HVDs in war on terror. Also senior member of Admin in inter-agency activities.

Graham. I'm not saying this is wrong. The Bybee memo. The legal analysis about CAT?

Haynes: I believe I am. There have been a lot of names associate..

Graham Were you aware that unless there was major organ failure there was not a violation of CAT?

Haynes: Yes sir.

Graham: were you aware of that before Rummy approved interrogation techniques.

Haynes don't remember.

Graham: 35 categories.

Haynes: A lot of confusion. When you talk about

35 techniques. Product of working group January 2003 to March 2003. What Rummy approved for interrogation of Qahtani, a decision in November [No December], there were not 35 techniques.

Graham: Qahtani involved use of dogs and nudity.

Haynes: Some conflation. Two of items for Qahtani included clothing and use of phobia. What was approved by SecDef. Widely held understanding of what was in those two categories. Use of dogs not intended to be dogs in interrogation room with detainee. Muzzled dogs in perimeter. Removal of clothing not nudity. You then jumped to dogs in room and naked people.

[Removal of clothing is not nudity, that's what we've learned today.]

Hanyes: Years after the fact, looking into belatedly disclosed emails that came to light at HQ level 2 years after the fact. Schmitt investigated 20000 interrogations identified less than a handful of problematic interrogations.

Graham: Your testimony is that they were not authorized. That's my point, that if it did happen it was never authorized by your or Rummy in manner used?

Haynes: yes.

Graham: These techniques mirror SERE program in uncanny way. Where did it come from.

Haynes: People closer to Gitmo than I was. I've never seen the 1, 2, 3.

Graham: Who made up the list.

Haynes: I don't have firsthand knowledge. There's some documentation that DOD has provided to the committee that talked about how they came up with their list.

Graham: This list you client (Rummy) approved.

Haynes: A subset.

McCaskill: You've just said you were the senior lawyer for DOD. Correct? You had a lot of lawyers under you?

Haynes: Over 10000 lawyers in DOD.

McCaskill: You had received legal input about this prior to you presenting this doct for approval by Rummy. Correct?

Haynes: Six years ago. Let me understand your question. I do not recall seeing the memoranda that were in the earlier panel's testimony. Not to say there wasn't a lot of anxiety about how to question terrorists. That was present from the moment war began. Law enforcement v. collection of intelligence.

McCaskill: Let me go down that path. Relied on analysis of Beaver.

Haynes Based on my own analysis.

McCaskill Do you have memoranda that you prepared.

Haynes reflected in the memo you have.

McCaskill D0es not cite any legal precedent. Any legal document that you relied on?

Haynes Package that came up with it.

McCaskill No legal opinion other than her legal opinion. Was there any legal opinion that lawyers do based on law and precedent, other than Beaver's opinion.

Haynes Important that you understand how DOD works. When I put initials on a document, it said I found it legally sufficient. Package is important. Reflects where it comes from, but also understanding of judgment employed by people proposing it. Sec has less time than I have. Chairman initials things.

McCaskill Lot of lawyers, experts in military law, saying red light red light, only document was Beaver's anlaysis. I'm trying to get you to acknowledge that that is what you used.

Haynes: That, Dunleavy (his opinion),

McCaskill He referred on her opinion

Haynes He said I believe these are legal.  
General Hill also said he believed all of Cat  
one and two were legal. Those three layers  
coming up, together with my discussions with my  
staff and Dalton's staff.

McCaskill: Dunleavy not a lawyer, is he? [Judge]  
Hill not a lawyer?

Haynes Beaver's difficulty with Staff JAG at  
next higher level, news to me.

McCaskill: The idea of getting intell is getting  
reliable info, it appears to me that the most  
experienced people in the country are in fact  
law enforcement, they understand interrogation  
techniques much better. We have to get really  
solid good information.

Haynes: Very interesting proposition. I agree  
law enforcement people do good work. Lots of  
people at Gitmo who were frustrated, including  
FBI. I'm not saying favoring one over another.  
Existence of two conflicting philosophical  
propositions. Law enforcement to protect us.  
Because of our constitutional system, we have a  
very generous set of procedural underpinings,  
that law

McCaskill: I'm talking about what's effective.  
What has been talked about is not just a matter  
of legal analysis. People will tell you what you  
want to hear.

Haynes: No one has advocated torture. I  
appreciate your profession that effective  
interrogation is what we're after. My job is to  
talk about what law permits and what it  
prohibits. Did I know there were people who had  
problems with the approaches. I believe it  
sprang from those things. In my experience as an  
observer, is that it is case by case person by  
person, and type of information of what is the  
best approach.

Inhofe: All the things we did to stop plots.

Haynes: When this proposal came up, Fall 2002, DOD had discovered months after he arrived that Qahtani was 20th hijacker. [9/11 9/11 9/11—hey, Haynes, has the anthrax case been solved yet???

Inhofe: Did you agree with all new techniques. You're led to believe that there's a lot of torture. A lot of political use. Abu Ghraib. Were techniques used at Abu Ghraib endorsed by Rummy?

Haynes: No. Not endorsed or approved by anyone above Centcom. Most people think about abuses that were not interrogation. These incidents have been investigated greater than any other incident. So there is a lot of data. It was just flatout abuse by people not being supervised.

[I don't often hate people. But I'm feeling that emotion right now.]

Inhofe: Army started taking steps and let me give you a blow job. [Oh wait, that's not what he said?]

Reed; You were aware of JAG memos concerned about these techniques.

Haynes You're referring to a group of memoranda, shown them about a month ago, first time I saw those memoranda. I don't want anyone to walk away to suggest I didn't know about concerns about DOD interrogate prisoners. That's what I was, we had a long exchange, about chronic debate about how to interrogate.

Reed; Senior Counsel to JCS, commenting on this Beaver memo. They prepared written statements about all these techniques, opinion of at least 4 legal officers and law enforcement officers. You were aware of those but weren't curious enough to be asked to read them.

Haynes I don't recall being aware of memoranda.

Reed; You're trying to make a judgment about GC, UCMJ, you're aware of a debate, but you have not—forget legal obligation—but you have no curiosity to find out what was going on. Your fundamental responsibility was to render a legal

responsibility to DOD. Your obligation was to give him the best legal opinion.

Reed: Where in your memorandum is it restricted to Qahtani?

Haynes: youc can read my memorandum.

Reed: Your statement that this was about Qahtani, but that's not the opinion rendered.

Haynes: We don't do these things in a vacuum.

Reed; You did it in a vacuum. You communicated to Myers that she should cease her response to these concerns.

Haynes: I accept her representation. I looked at this hard. You're a West Point grad. You know how Pentagon works. This was one decision, it came in context that I described a moment ago. My client needed a recommendation. It had been sitting in HQ for a month. There are 10000 lawyers in DOD. There has been a portrayal in the press as if the military lawyers all objected, there are military lawyers whose job it is to counsel this chain of command. Southcom not as involved as he might have been Looked at it carefully, looked at it under the circumstances. My job is not just to say no, but to say where is the area of discretion for the client.

Reed: What did you rely upon?

Haynes: US Constitution, we believed, did not apply. GC did not apply. CAT would apply, non self-executing treaty. Implementation signed by President, prohibition reflected in that applied. President's order to treat would apply. UMCJ would apply to some degree.

Reed; If UMCJ applied, do you agree with Beaver's analysis that it would be a violation to poke or push.

Haynes: No. I wrote the memorandum before you.

Reed; how did you communicate decision to Southcom and GItno?



Haynes: As the lawyer I was the advisor, SecDef made the decision. Normal transmittal through Joint Staff.

Reed; You don't know how it was communicated.

Haynes: I don't know.

Reed: Dalton went to some length to say that her opinion was based on the conditions. Where is that communicated in your memo. If those conditions were central to the legality of your advice, don't you have an obligation to communicate this to him? Shouldn't you also communicate to him that his concurrence was contingent on some conditions?

Haynes: All understood that those conditions apply.

Reed; Can you list them?

Haynes: You've got more documents than I've ever seen on this. There were plans that had to be developed with each detainee. [filibuster filibuster filibuster]

Reed; Where does it reference those conditions.

Haynes: Not to mention the training that that question maligns.

Reed; I reject that. You empowered them to ignore the UMCJ. The only thing you sent them was these techniques apply. Don't go around claiming you protect the integrity of the military. You degrade the integrity of the US military.

Sessions. blahblah blah blah blah My job is to be your friend and give you time to prepare for the next Democrat.

Graham: Before Rummy signed off on the memo, the FBI witnessed abusive conduct. Is it your testimony that neither Rummy or you approved such techniques for the 20th hijacker.

Haynes: SecDef had no knowledge, nor did I.

Graham: GC for Navy came to you with concerns

before the memo was signed. Did he threaten that if you do not revisit I will draft a memo and go public with this?

Haynes I remember him coming in at least twice, very passionately, and understandably, he had been hearing things, in each case, I reported up the chain, and asked Dalton to look into it.

Graham: His testimony is that he had to release these opinions to the public at large. That had nothing to do with you revisiting that December memo.

Haynes: I don't remember the edge to these discussions.

Graham when was memo repealed and replaced?

Haynes 12 January recision.

Graham: What happened in that intervening period to recommend to him that we need to take this off the table.

Haynes I had my own misgivings. It's hard to identify a single thing.

Graham: It wasn't the threat.

Haynes I don't recall him doing that. I want to be responsive.

Graham: that's a pretty quick turnaround, from Dcember 2 to January 12. Something earthshattering had to occur.

Haynes Chronic passion. So many competing concerns.

Graham [going umhmm in background, doesn't believe him]:

Haynes: My recollection was.

Graham: No, we're not going to do that. A group of people did not find out about memo until a year later. Are they correct? There's so much passion about this? You can't verify that they working group didn't get to look at the final product? Where did all the passion go?

Haynes: My passion was to get the SecDef good legal advice.

Graham: these people read in paper that you found a new way of doing things.

Haynes: The entire DOD felt like working group led to very good result.

Graham. The working group was formed bc you got criticism from Mora. The working group never got to see the final product. Back to December 2 memo. One Cat 3 technique was waterboarding. DO you think that's legal? Would it violate UMCJ to grab someone and put a cloth over their face to simulate drowning?

Haynes: Now, yes.

Graham: You don't think it was illegal then?

Haynes: not at that point.

Graham: I guess thing I'm left with, attitude we may be attacked law took on impediment to our safety, not our strength. A lot of people saw the laws made us more at risk. When the law in this war is a strength, not a weakness. Clear that memo never limited to one person. Clear that the techniques migrated all over the military. One of the great tragedies that we allowed our enemies to take advantage of this situation. For a period of time we could not have done more to help them.

Levin: October 2002.

Levin: Were you aware at the time of these objections.

Haynes: I don't recall objections of this nature.

Levin: were you aware of Army's Intl Law Div of their objections?

Haynes: (After some stalling) I don't recall seeing this.

Levin: Air Force.

Haynes: I don't recall seeing this memorandum.

I've told the panel I knew there were concerns.  
I don't recall these.

Levin: Marine Corps response.

Haynes: I don't recall seeing this document.

Levin: Do you recall Eleana Davidson say further assessment needed?

Haynes I don't recall, but we did further assessing, so maybe she said that at the beginning and maybe we did it.

Levin: Before SecDef, services lawyers let your office know that they had serious problems. You vaguely remember, but you never took the time to ask for those documents. Yet when you were asked, did you pay scrupulous attention to the law, you ignored those memos that came to your office and then you cut off the review that you requested and Dalton was conducting. You ignored the lawyers and then when there was a review you send word that you wanted that review stopped. That is stymying consideration of one of the most significant legal decisions that this country made. The errors made in those opinions have cost this country tremendous damage. Do you agree that you cut off the Dalton review in the middle.

Haynes: What I heard her say was she restricted the broad review.

Levin: No, she said you told her to stop the broad review. She said it had never happened before never knows of it happening afterwards.

Haynes: I don't remember it. That is stymying a review of the law to make sure that what we're doing comports with the law.

Levin Then you have the audacity to say that there are two group sin conflict, one the law enforcement people, another those who want info in interrogation. There's a third group, the lawyers to the military. You ignored them, you don't remember seeing them, and then when that broad review was taking place, you stymied that review. How can you say there are only two

groups? Your office was definitely sent those memos, your staff had discussions with the people who sent those memos. Why aren't they in your equation.

Haynes Vigorous disagreement of your characterization. I did not ignore concerns, I addressed concerns. There has to be a decision-maker, when you have multiple different opinions, I made a decision it was my practice to be as open as I could. There are physical constraints. I've never denied that there were disagreements, legal disagreements. If I didn't see them I didn't ignore them. I didn't know they existed. I don't recall seeing them and I don't recall knowing about the memoranda. I probably saw millions and millions and millions of pages of information FOr you to suggest that because I didn't see every single piece of paper.

Levin: Have you ever expressed publicly that you had misgivings about that opinion.

Haynes: I don't know.

Levin: You said there're two groups that caused this tension. The military services who told your office in memo after memo they wanted much more analysis, that came to your office, concerns that their people might be subject to criminal action.

Haynes: that's a misperception of the reality that I experienced. If you think the two extraordinarily gifted lawyers up here before. It talked to her.

Levin She testified you stopped the review in the middle.

Haynes A limited degree of time and high degree of urgency. Alien enemy combatants outside of geneva conventions.

Sessions: blah blah blah blah. I'd love to rub your penis if I could tell the difference between 10 and 11.

Sessions: And to demonstrate what a piss poor

lawyer you are, I'm even going to make myself look smart by pointing out the stuff you couldn't find on your own to defend yourself.

Levin: Focus of our investigation is where they all began. General Fay stated in his report that a Jan 24 03 memo called an interrogation techniques memo, that memo recommended removal of clothing, and it discussed "exploiting the Arab fear of dogs." From Afghanistan how did they get to Iraq. DOD IG said at the beginning of Iraq war used Jan 03 SOP which had been developed for ops in Afghanistan, that had been influenced by counter resistance memo approved by Rummy on December 2. Included techniques such as sleep deprivation stress positions, and controlled fear, muzzled dogs. And then General Fay said removal of clothing was imported to Abu Ghrab from Afghanistan and Gitmo. When I asked Fay at a hearing whether the policy adopted by Rummy on December 2, 2002, he said "yes." Now. My questoin. Did you ever discuss the SERE techniques with Dunleavy.

Haynes: I don't recall. I may have, I don't recall.

Levin: Bybee memo. Did you read it?

Haynes: I have read it. I don't know when I first read that. I don't remember when I read that. I have told you what I relied on.

Levin Did you tell our staff that it's likely you read it before November 2002. This is a memo that would be binding on the entire executive branch.

Haynes: Sure.

Levin: Why would you not have read that before recommending a decision to SecDef.

Haynes: It was addressed to someone else.

Levin So you may have.

Haynes There were a lot of things going on.

Levin Where you aware of the contents of it.

Haynes I just don't remember.

Sessions. blah blah blah blah.