

SENATE ARMED SERVICES TORTURE HEARING, TWO

Here are the documents released by the committee.

Are here are some links to Spencer Ackerman's work on this: [here](#), [here](#), [here](#), and [here](#).

McCaskill: We disrespect men and women who serve if we don't have this hearing. Did you review Beaver opinion?

Shiffrin: No

McCaskill: If you came across phrase, "immunity in advance," would it cause you pause?

Shiffrin: yes.

McCaskill: Any lawyer would ask what planet are we on? That would be a crime!

McCaskill: In fact, as I just said, if someone visits with someone about committing a crime and I'll give you immunity, wouldn't they be guilty of a crime.

Shiffrin: they could be, Senator.

McCaskill: This legal memorandum, basis for SOD to sick dogs on them, contained a legal theory called immunity in advance, and no one, your boss got this, he is a trained prosecutor. Has he had experience as a prosecutor, experience in a court room. It is mindboggling to me that no one would hear the raging offense to rule of law.

McCaskill: what are the names of people who gave you impression we needed more aggressive techniques. Who told you.

Shiffrin: Not what I said. Discussoin of progress, lack of progress, obtaining actionable intelligence out of detainees. Chaired by Haynes, 5-6 other lawyers.

McCaskill: Who was in the room?

Shiffrin: frustration, didn't say we needed to change techniques. Whit Cobb, DGCIA Charles Allen, Marine worked in Counsel office, Bill Lietzow, there was a lawyer now my successor, Eleana Davidson, responsible for detainee matters. Those were the lawyers would have been present.

McCaskill: ever present after Haynes recommended approval of these techniques?

Shiffrin: Met with Haynes every day. I forget the date.

McCaskill: I can give the date. November 27, 2002, Approved December 2, 2002.

Shiffrin: Vague recollection that memorandum approved.

McCaskill: Aware memorandum existed. I think you're a good lawyer care about your country. We're trying to figure out who decided. Did this come from David Addington and Cheney, Gonzales' shop? Chertoff. There are people still in responsibility in our govt. No one is willing to say where this came from. This move towards imploding the traditions of this country.

Shiffrin: The GC office often operated in compartmentalized fashion. Not unusual to get request about SERE and I'd find out that someone else was doing the same thing, or that it was going to be used at Gitmo, never be part of discussion about what they were going to do.

Martinez: Context. Mistakes have harmed our nation. No further questions.

Levin: Baumgartner said you requested physical pressures.

Shiffrin: Memo from GC.

Levin: Baumgartner. Do you stick to your testimony?

Shiffrin: Refers to meeting with OSD GC. I never met Baumgartner before. To extent these memos

responsive to requests at meeting, I didn't attend meeting.

Levin: Baumgartner, phone conversation. You deny that you used term physical pressures, he sticks by his testimony. Did he ever use the term carrots?

Shiffrin: I recall conversation with Dunleavy.

Levin: You testified you never discussed using these tactics offensively. You're aware that export of those not way program designed.

Baumgartner: yes

Levin: Major General Solagan is? JPRA higher HQ, right? Memo I used, offensive purposes lies outside responsibility of JPRA.

Baumgartner: Use of our guys in offensive manner not what we were about. We were about training.

Levin: when misused in that way, has anyone been held accountable for misuse of program?

Baumgartner: No

Levin: are you aware that SERE techniques went to Iraq. Instructors went to Iraq at request of special mission unit taskforce. JPRA provided assistance to interrogation operations.

Baumgartner: I was retired by then. I don't have a comment. I was not part of decision-making process.

Levin: Do you disagree with Solagan on question on whether or not use of interrogation knowledge lies outside of JPRA.

Baumgartner: I didn't say that.

Levin Dep Comm

Levin: Gates said the other day, when he fired two Air Force people, during his tenure, accountability must reach all the way up chain of command. Accountability must reach beyond Colonels. And that hasn't happened.

Warner: Was SERE info shared with anyone else,

DIA, and another recipient, classified nature. I wish to push further. This question was the information you gathered, in what form did you convey that info.

Baumgartner: Briefing and document.

Warner: Do we have that document?

Levin: Testimony that is classified. We got 38,000 documents this week, they sure are about a year late.

Warner: did JPRA provide training?

Baumgartner: instructions, not training. Emails I've seen say instruction and exploitation training.

Warner: was that sharing an issue that your organization sought higher authority to approve.

Baumgartner: Went to flag level. JPRA into Chief of Staff's office.

Warner: 26 July 02,3 memo for OSD GC. To answer follow-on questions July 25 meeting. Were you familiar with that meeting?

Baum: Phone conversations.

Warner: 2-3 telephone conversations.

Holy Joe: Ogrisseg: Training we're giving personnel alters with enemy or purpose of interrogation?

Ogrisseg: Yes, changes with the enemy.

Holy Joe: Does it change with the aim of the torture. Senator McCain was to sign a confession for propaganda purposes. Not for eliciting information, which is the purpose here. Current enemy likely to put captive on TV and kill him.

Ogrisseg: Way that people processed before. One way that it can be exploited by enemy. Terrorist network may be to make a statement. Can't determine which actions the students are going to make.

Holy Joe: Islamist extremists, theological

extremists, since you were knew they were not for training, natural to assume to use against detainees. Any info that was based on unique cultural background of Islamist terrorists?

Ogrisseg: Are you asking me?

BAumgartner: NO.

Holy Joe; Use of dogs. Muslims have special phobia of dogs. Did you deal with that in submission to GC.

Baumgartner: no.

Holy Joe: Shiffirin? In trying to find additional info to assist in interrogations, did you ever reach out for tactics or info based on unique cultural characteristics or phobias or fears?

Shiffirin: No, my request was just send me everything you have.

Holy Joe: Any material dealt with unique phobias?

Shiffirin: Everything I got was historical.

Levin: Shiffirin, reverse engineer SERE techniques. You said two minutes ago, you didn't ask about techniques. Ten seconds ago I asked you this question.

Shiffirin: My primary purpose was to find all the info. I intuited we could reverse engineer a SERE technique.

Levin: I see, you believed that might be one of the purposes.

Levin: You said that torture increases resistance and is not reliable?

Ogrisseg: Yes

Levin: Sleep deprivation, disorientation, even one night affects language attention. memory function can degrade captives ability to cope with challenges

Ogrisseg: I don't believe I wrote that section. I need more context on what sleep deprivation

means. I would agree that prolonged periods of sleep deprivation would be bad. We don't inculcate them to sleep deprivation. We don't have enough time. We try to simulate that. We keep them up overnight.

Levin: how many hours

Ogrisseg: 4-10 hours.

Panel 2: Beaver, Dalton, and Mora

Thank you to Mr. Mora.

Levin: Beaver, in Sept 2002, behavioral scientists attended training at Fort Bragg, 9/25 Jim Haynes, Addington, Rizzo, and Chertoff traveled to Gitmo. A week later Jonathan Fredman came attended meeting with you and discussed SERE. Fredman says "anti-torture" basically subject to perception, "the detainee dies you're doing it wrong." You said, "we'll need documentation to protect us." Why would you need protection.

Beaver: I can't account for accuracy of email. WRT Fredman, I had held a number of meetings once military intel wanted to do more techniques, I thought it important that everyone participate in meetings. CITF was invited. I don't remember what Fredman said, nor what I said, in terms of requesting additional techniques, these techniques not in Field Manual, not in recognized manual, in terms of obtaining command approval, whatever was going to be recommended by MI need to be approved weren't already trained at Fort Huachuca.

Levin: Reference to protection? Did you say we'll need documentation to protect us?

Beaver; I can't say with certainty. Fredman, another view, open discussion.

Levin: Do you remember talking about wet towel technique?

Beaver: DI personnel wanted to request, I had not seen it myself.

Levin: You referenced SERE employed wet towel technique.

Beaver: Interrogators raised technique as one they wanted to employ.

Levin: What about SERE?

Beaver: I thought Hill would approve. Need SOP, people trained, all kinds of things to ensure used properly. Because SERE already had SOPs on these techniques, if something got approved, something SERE used, it made sense as a starting point for SOP.

Levin: Why would you be talking about SERE since its purpose was not interrogation?

Beaver: Detainees showing signs of counter-resistance trained, GC did not apply, they were not to be treated as POWs, if you know there's something out there that is in the military community, they would look to that. Things that were illegal, torture was illegal, of course they weren't going to ask for something like that, you look to something you can cut and paste from. I assume that since most people knew SERE, it was a natural jump, and so they reached out to SERE, the only people who had psychologists were SERE.

Levin: You call a natural leap. Were you aware that it was a reverse purpose? Were you aware of all that and yet you say it's a natural leap?

Beaver: At the time Dunleavy did not include me, the people he sent to SERE school I was not part of that conversation. I'm just imaging why my colleagues would go to SERE school.

Levin: were you surprised there was no written legal analysis.

Beaver: I can only speak to Jane Dalton. I tried to get help from Southcom supervisor, reached him at golf course at Southcom, I sent a draft, I said, I need your help. Dalton told me I

needed to speak to Col Superville. I had no idea until 2004 when Haynes released my opinion of many of the other things that had happened. When I submitted by request to Southcom. Until it came from SecDef, I didn't know what had happened, I thought that Hill made the decision.

Levin: were you surprised that your opinion was relied upon?

Beaver: Shocked. One of the reasons I needed help from Southcom to get it off the island get it to Hill, call military justice experts, to make an objective decision, I thought was the best thing possible, I fully expected Hill's staff to approve a very narrow set of practices.

Levin: Hill was Southcom commander.

Graham: Dalton, did you see Beaver's memo. Did you get request to give opinions?

Dalton: Don't recall the telephone conversation that Beaver related. When I saw memo I believed serious deficiencies.

Graham: Who did you tell?

Dalton: I discussed with my staff, at that time I did not discuss with anyone else.

Graham; Mora, did you see memo?

Mora: Inadequate treatment of sensitive issue, took it to Haynes and pointed out to him.

Graham: no one made you write this memo.

Beaver: Based on Dunleavy's request. No pressure. Generated by me and staff.

Graham: You felt you were hung out a bit.

Beaver: No animosity. I understood at the time that I was hung out by Southcom SJA.

Graham: All to get better info. Was waterboarding mentioned?

Beaver: Navy doctor deployed for six months. SERE 2 years assignment. Relayed to myself that he had observed 2000 or 3000 sailors who had

been through that school, described to me, only 2 failed to give it up, 2 seals used to controlled drowning. Became aware of that for the first time. What Jerry Feifer discussed was not the board, but a wet towel.

Graham: Someone was contemplating this technique?

Beaver: If it could be done legally, yes. You don't jump to one thing first. You build, you use what works. That could be just interviewing.

Graham: If I asked you if UCMJ prohibits waterboarding, what would you say?

Beaver: um um

Graham: What is your background?

Beaver: Jack of all trades.

Graham: When you called Dalton why did you call?

Beaver; Help

Graham: Why not help?

Dalton: I don't recall that conversation.

Graham: When you saw it, why didn't you do what Mora did?

Dalton: Conduct further legal and policy review.

Graham: Conclusions?

Dalton: I did not conclude that process at that time.

Graham: How long did it take you to conclude this was wrong?

Mora: As soon as I heard, I did everything I could do, until this was rescinded. When I reviewed memo, when I saw it was unbounded, I knew instantaneously, based on inadequate legal analysis. Every JAG shares that view.

Graham: Are we in the right place.

Mora: Impression is military is in right case, doubts about intelligence community.

Pryor: You did not attend September conference at Fort Bragg. You don't know if it was recommended there that we use SERE in offensive manner.

Beaver: The psychological team would gain benefit by talking to their counterparts at SERE and MI contingent went on fact-finding mission.

Pryor: Purpose was to take SERE techniques and use offensively.

Beaver: To see if anything should be used.

Pryor: Part of the purpose was to see if you could apply the techniques at Gitmo.

Beaver; Based on what Dunleavy told us afterwards.

Pryor: You said In short, the techniques would not have been conducted in abusive manner if approval techniques followed. Waterboarding is justified if there's the proper controls.

Beaver: I wrote a legal opinion. Whatever approved, it would be approved so it would not be abusive. SecDef did not approve waterboarding. I was not approval authority.

Pryor: Tab7, notes from October 2002. Comments paraphrased. You referred to this, you don't know how accurate it is. When did you first see this memo?

Beaver: This past March.

Pryor: You've reviewed this. Any questions about accuracy?

Beaver: No way for me to recollect what I said six years ago. No way for me to say if what they say is accurate.

Pryor; You come across as being eager to have these techniques used. You say, yes we can do sleep deprivation if it's approved.

Beaver; My counterparts were unhappy with this line of discussion. They wrote policy piece. Never received legal objections.

Pryor: They didn't want these techniques?

Beaver: No, they wanted the law enforcement techniques to be used.

Pryor: sleep deprivation. You're paraphrased, officially it is not happening. The ICRC is a serious concern. You maybe were trying to cover it up.

Beaver: I was the liaison officer with ICRC, if you've got someone in active interrogation, you can't stop the interrogation, so the ICRC would be down there and leave. If you're going to do a more intense interrogation, you had to have time to do it, make sure it wasn't disrupted. If you're in the middle of an interrogation, you can't interrupt it to be interviewed by ICRC.

Pryor: You weren't that familiar with UCMJ,

Beaver: my hope was that when my opinion went to Hill, my concerns would be appropriately addressed by people who do it full time. I was very concerned about the military.

Pryor: did you look at UMCJ, Army field memo, Constitution. Do you have notes?

Beaver: Whatever was retrieved from Gitmo the committee can have. DOD had it, DOD would have provided it.

Pryor: Did you keep a file with all your legal research?

Beaver: It was on a shared supernet. I would have no idea if it was there. I provided the basis for it in the opinion.

Warner: Dalton, First flag rank in JAG career, right?

Dalton: For a woman, yes.

Warner: Vanity Fair, should have been reviewed by Dalton. That never happened. Haynes short-circuited the review process. There's a certain amount of independence accorded the chiefs of each branch. At that time, to what degree did the Chiefs exercise their independence? Was any

consideration given at that time, to exercise rights under Goldwater Nichols their concerns about this policy change?

Dalton: I'm not sure what policy change?

Warner: interrogation techniques.

Dalton: Uh, yes sir.

Warner: You stopped your analysis what you were doing for the Chairman and Richard Myers, is that correct. Chief had a duty to discuss.

Dalton: When memo came in asking for enhanced techniques. Memo distributed to services. Provided inputs. They (the services) sent in responses to joint staff tasker asking for inputs on Hill memo. All services expressed concerns about techniques. Also expressed appreciation for need for good intelligence. Needed further legal and policy review. next step larger review. What I intended to do.

Warner You initiated.

Dalton: Yes. When I learned that Haynes did not want that broad-based policy review to take place. I stood down.

Warner: How were you told to stand down? Was it in writing?

Dalton: It was not in writing. Chariman indicated to me that Haynes did not want this broad-based review to take place. I continued to engage with Mr. Haynes' office. This piece has not necessarily been clear. When I stopped review, nevertheless I worked with Haynes' office and with Chairman in reviewing Hill's request. At that time there was no perceived need to complain bc process still proceeding. I understood sensitive, Haynes wanted close hold, his prerogative, his office take lead, I would support Chair and work with Haynes.

Warner: Final product?

Dalton: Based on discussions, with Gitmo, Soutcom, I believed that techniques that secretary approved could be conducted humanely.

Warner: Consistent with US and intl law?

Dalton: If conducted with oversight. In context in which discussed. Removal of clothing not nudity, working dogs not dogs unmuzzled and snarling, stress limited to standing for four hours. When you put them together, those techniques could be consistent with domestic and intl law.

Warner Myers made a point, my initials not on doct. Reservations? Did he express them with you?

[Dalton looks behind her, perhaps for legal counsel. And an officer consults with Beaver too.]

Dalton: Days leading up to approval meetings involving Haynes, Myers, Sec Def, and myself. We discussed the techniques. My recollection was that Myers satisfied.

Reed; Dalton, when you received request, Joint Staff solicited opinion of JAGs, extraordinary concerns. "Crossing lines of humane treatment." "Several techniques arguably violate federal law and will expose our service members to prosecution." Did you make Myers aware of serious concerns raised by uniformed officers.

Dalton It is my recollection that he was aware and that I made him aware.

Reed; Did he make Haynes aware?

Dalton: Recollection that we were aware of concerns. Discussed in safeguards.

Reed; You continued discussions with Haynes. You were told to stop analysis.

Dalton I was told to stop broad-based analysis.

Reed you were not dissuaded by Myers to continue to work with Haynes.

Dalton: Myers did not prevent me from continuing discussion.

Reed; You participated in several discussions,

not all discussions. Did you raise these concerns? Violation of UCMJ?

Dalton: Hard time recalling particular concerns. I believe known and addressed, we recognized issues related to UCMJ.

Reed; Myers approved techniques?

Dalton: [balks slightly] Agreed that those techniques could be used.

Reed; Did you have concerns.

Dalton: There was one phrase that all techniques, including the three not authorized, I did not necessarily agree with that.

Reed: Did you tell Myers that there were elements that might be serious legal problems.

Dalton: Did not see it until after SecDef signed it.

Reed; Did you tell Myers.

Dalton; After the fact sir? Since SecDef did not approve those techniques,

Reed; Memo said all techniques were legal. But as policy matter would not use them.

Dalton SecDef was approving a set of techniques. It was not necessary to reach the question given that SecDef approved the ones he did.

Reed Those techniques were not approved as a matter of policy, not of law.

Reed: Beaver's memo. Push, wet towel, would constitute violation of assault. One of the techniques you approved was push. Do you disagree?

Dalton: I disagree. I did not view light pushing and poking to be maltreatment.

Reed; You would also disagree that bc of violation of UCMJ there would have to be immunity.

Dalton: That's correct.

Mora: Problem was no bright line. All subject to abuse.

Reed; Part of your rationale for agreeing to conclusion, you objected, you keep citing to conditions, where are those conditions? I don't think SecDef signed memo that approved of conditions.

Dalton: Pfeifer memo attached, use of techniques...

Reed; Where is the direction by SecDef that those conditions are mandatory?

Dalton: Meetings leading up to approval. In context of one HVD (Qahtani). In that context.

McCaskill: I'm proud as an American, Mr. Mora. Let me cut to the chase. Ms. Dalton and Beaver. Putting detainees together hooded, siccing dogs on them, is legal?

Dalton I don't believe that's legal. Not approved by SecDef

Beaver: No ma'am. It never occurred at Gitmo

McCaskill Reading memo. You understand words matter. Removal of clothing. It says Using detainee phobias such as fear of dogs. I'm trying to figure out as a lawyer, how that does not envision naked people having dogs sicced on them. How does that not occur?

Beaver When you develop a plan, if someone had said, lets sic the dogs on them. That did not happen.

McCaskill Dogs were used with naked people.

Beaver Not at Gitmo

McCaskill Within our military. It happened/

Beaver I can't comment..

McCaskill Ms Dalton

Dalton: Those approved for Gitmo and did not involve nudity.

McCaskill Removal of clothing. When you were discussing safeguards. Did any one talk putting in the word all. If I saw removal of clothing and I was trying to get info, how would anyone know?

Dalton General Miller said it did not involve nudity.

McCaskill there's nothing here that would say removal of clothing. It's not in there.

McCaskill Ms Dalton are you aware of any concept called advance immunity? Did it jump out at you.

Dalton It was one I thought was not correct.

McCaskill did it concern you that it included a concept that would itself be illegal.

Dalton That's why I believed there needed to be additional review.

McCaskill And btw, I feel for you today, Beaver, this is hard. Proposed strategies do not violate law

Beaver I believed the law allowed a lot. With GC not applying. Even European Human Rights say hoods are allowed. I was at the bottom of the food chain. I didn't think of many of the things that was written in the 50 page opinion written by DOJ. If it was looked at people not directly involved. I was trying to highlight my extreme concern that MPs could be prosecuted later. For me it was a red flag for people like Dalton to say, I'm concerned about this. Unfortunately Superville never responded.

McCaskill You felt you needed to move it off the island. You put your name on it as the lawyer who was asked to give an opinion, why should they take the heat. Here's what I want. Let me finish this point. You have said you didn't feel pressure from anyone. You said in your memo the proposed strategies do not violate applicable law. You said "Agree" that proposed strategies don't violate law. Who were you agreeing with?

Beaver I don't know. Perhaps it's just my

opinion. I had built in safeguards. Legal opinion, medical safeguards, legitimate govt purpose. Interrogation is always a grey area. You can't come up with all the conditions of an interrogation. If you had these reviews, these safeguards, I believed in my colleagues from the intelligence community. That's why I believe there was no violation of the law at Gitmo. Detainees were beaten to death at Bagram.

McCaskill It's a sad day in this hearing room when we say at least they weren't beaten to death.

Beaver Detainees were not abused.