

SENATE ARMED SERVICES TORTURE HEARING

Joby Warrick maps out what we can expect from today's Senate Armed Services Committee hearing, now showing on CSPAN3.

A Senate investigation has concluded that top Pentagon officials began assembling lists of harsh interrogation techniques in the summer of 2002 for use on detainees at Guantanamo Bay and that those officials later cited memos from field commanders to suggest that the proposals originated far down the chain of command, according to congressional sources briefed on the findings.

The sources said that memos and other evidence obtained during the inquiry show that officials in the office of then-Defense Secretary Donald H. Rumsfeld started to research the use of waterboarding, stress positions, sensory deprivation and other practices in July 2002, months before memos from commanders at the detention facility in Cuba requested permission to use those measures on suspected terrorists.

The reported evidence – some of which is expected to be made public at a Senate hearing today – also shows that military lawyers raised strong concerns about the legality of the practices as early as November 2002, a month before Rumsfeld approved them. The findings contradict previous accounts by top Bush administration appointees, setting the stage for new clashes between the White House and Congress over the origins of interrogation methods that many lawmakers regard as torture and possibly illegal.

This is a well-constructed hearing—and I say that not just because my Senator, Carl Levin, put it together. It has three panels. The first features the people who turned SERE techniques into torture techniques:

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

Lieutenant Colonel Daniel J.
Baumgartner, Jr., USAF (Ret.)
Former Chief of Staff
Joint Personnel Recovery Agency

Dr. Jerald F. Ogrisseg
Former Chief, Psychology Services
336th Training Group
United States Air Force Survival School

The second panel will expose the debate among military lawyers about whether or not to use torture:

Mr. Alberto J. Mora
Former General Counsel
United States Navy

Rear Admiral Jane G. Dalton, USN (Ret.)
Former Legal Advisor to the Chairman
Joint Chiefs of Staff

Lieutenant Colonel Diane E. Beaver, USA
(Ret.)
Former Staff Judge Advocate
Joint Task Force 170/JTF Guantanamo Bay

And the third features Jim "Chevron" Haynes, who is under some pressure for his changing testimony, potentially amounting to perjury:

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

Here are the documents that will be discussed during the hearing (courtesy of WO and Marty

Lederman).

I'll be doing a light liveblog all day. Right now, Carl Levin is up reading his statement.

10:35 Levin and Lindsey Graham both gave opening statements. Levin is in a typical Levin mood (ornery but principled). Graham (who is serving as acting Ranking Member, in lieu of John McSame) sounded reasonable for about 2/3 of his statement. He said, clearly, that Abu Ghraib was **not** done by a few bad apples. He also sounded like he's ready to take it to Jim "Chevron" Haynes. But then he said, golly, can we stop investigating our mistakes now? It was 9/11 9/11 9/11. Graham also used this opportunity to attack the Boumediene decision, setting up his and Holy Joe's legislative attack on it and the Constitution.

Note who didn't provide written statements: Shiffrin and Haynes, those in most legal risk.

Finally, consider some of the political tensions here:

- McCain appears to be hiding, letting his chief apologist Lindsey Graham to take his place. Frankly, I'm happy to have Graham—as a JAG officer, occasionally he commits reasonableness (as he did in his opening statement). Still, it is telling that the Republicans presidential candidate doesn't want to talk about torture.
- We're missing Ted Kennedy and (I think) Robert Byrd, due to health reasons. That's unfortunate. We'll

miss their voices in such an important hearing.

- Given the absence of Kennedy and (I assume) Byrd, and Holy Joe's presence as a "Democrat," the Republicans effectively have a majority today.
- There are seven Republicans on the committee up for re-election (plus McCain). In declining order of electoral threat, they are: Dole, Wicker, Collins, Cornyn, Inhofe, Chambliss, and Graham. Let's see whether the prospect of a tough re-election makes these people reasonable or leads them to sit out this hearing.

Levin: Shiffrin: you had discussions with Jim Haynes about interrogations. And did you talk about SERE?

Shiffrin; yes. My recollection is that at some point in the spring I had discussions about where expertise about interrogation might be. DOD had been out of the business of interrogation since Vietnam. I said finding historical professional journals. I assumed this stuff was still being investigated by professionals.

Levin: Was it after Haynes that you talked to Baumgartner?

Shiffrin: I spoke to someone, it could have been Baumgartner.

Levin: You don't remember whether those requests were based on Haynes.

Shiffrin: No, based on that. As to whether he told me to contact JPA, I don't know.

Levin: Frustration with lack of intelligence?

Shiffrin: Discussion about progress or lack of progress?

Levin: You sent physical methods and document from Ogrisseg. [checks whether his memo is the one submitted as evidence] The first attachment was Ogrisseg memo. Get's title of the memo.

[You think we can borrow Levin for the McClellan hearing on Friday?]

Levin: Ogrisseg, in your prepared testimony, you said wrt July 2002 communication with Baumgartner, was your recollection that Baumgartner called you directly. He indicated that he was getting asked from above. [Reviews Ogrisseg's opposition to using SERE offensively, verifies that his memo is the one submitted as evidence, asks whether SERE should be used to interrogate.]

Ogrisseg: Those techniques are derived from what has happened to our personnel from the enemy. We put students through it so we can increase their resistance and their confidence that they will be able to survive.

Levin: Is there a way those being trained can get the treatment to stop?

Ogrisseg: Yes.

Levin: Are SERE instructors trained interrogators.

Ogrisseg: No.

Levin: Baumgartner, do you remember saying you got the order from above?

Baumgartner: Yes sir.

Levin: Who was above?

Baumgartner: Office of General Counsel [that is, Haynes].

Levin: You did not believe that these techniques would be used against detainees?

Ogrisseg: Yes.

Graham: Haynes concerned that we're not getting good intelligence using rapport based techniques.

Shiffrin: I remember attending at least 2-3 meetings where topic was frustration with whether we were getting information.

Graham: Was the sense that something else needed to be tried?

Shiffrin: My request was about what worked and what didn't work. This info in Spokane, and it was going to take some time to get it. I told Haynes it's 3000 miles away, it'll take more than a day to get here. I got some stuff from 1950s.

Graham: Baumgartner. Do the techniques work? Do they get good intelligence?

Baumgartner: In what frame of reference? I'm not an intelligence officer. They work to demonstrate to a student how to resist getting intelligence.

Graham: No opinion whether they yield good information?

Ogrisseg: These are effective for getting our people to survive from captivity.

Graham: You can get anyone to say anything over time?

Ogrisseg: That's the problem. You could get them to say anything.

Holy Joe: Blah blah blah. Congressional oversight. Bestill! I might burn myself, it's been so long since I had any oversight.

Holy Joe: Hindsight 20-20. People on this committee know intelligence is important.

[I guess Joe is the designated apologist for torture. Nice. Anyone rethinking their support

of Holy Joe against Lamont?]

Holy Joe: We're a nation of law. Looking back, some people, I assume, well-motivated, that were wrong. And some people who said some things, that in hindsight, were jarring. Even Rummy's statement, which is hard to read with certain clarity, it has an edge, about how long detainees could be forced to stand. That's not what this is about. There are heroes that emerge. Levin's statement shows that. Mr. Mora is, in hindsight, a hero. I want to go to my questions [thanks, Joe]

Holy Joe: Shiffrin, why in the world would we have gone to the people training the SERE group, my only question to myself was, why weren't we prepared ourselves?

[Today's drinking game: drink a coffee when Holy Joe says "hindsight."]

Shiffrin: Initial motivation was to find the font of learning. There was a discussion about reverse engineering SERE. I don't know where it came from. I think Haynes came back to me and said, "no this 50s stuff isn't what we're looking for." [Note Shiffrin said he was looking for stuff that wasn't criminal interrogation.]

Holy Joe: Did you ever call, or did anyone call, the interrogation experts at the DIA? CID?

Shiffrin: Not to my knowledge. I do recall Army CID fairly early on.

Holy Joe: Prosecutors in civilian setting? Of course criminal detainees have more protection—at least prior to SCOTUS decision last week.

Shiffrin: Not to my knowledge.

Holy Joe: Ogrisseg Did anyone ask you about your judgment as a mental health professional about effectiveness of techniques? Not to train our people, but to elicit information. In your memo, you did not have to offer your professional judgment?

Ogrisseg: That would have been outside the bounds of my competence.

Collins: Shiffrin. Why not seek assistance from FBI?

Shiffrin: I have no personal knowledge whether they went to FBI. My personal observation in limited dealings with Secretary. Secretary very jealous of other agencies, specifically wrt inherent capabilities. I brought up CIA's ability to get things done in Afghanistan. Secretary was quite upset. CIA had been there fore 25 years. That was never a satisfactory answer to him. It would have been unthinkable to say, the people that are really good at this are CIA, DIA, others who have been conducting interrogations.

Collins: Secretary's intent to build up duplicative ability. What about Army Field Manual. Was there a discussion about why that was inadequate?

Shiffrin. Not Aware.

Collins: Baumgartner?

Baumgartner: no, I'm not.

Collins: Are you aware of a time when techniques based on SERE training were successfully employed.

Baumgartner: Not just SERE techniques, used by FBI, by priests, by mom and day, good cop, bad cop, a lot of them are nothing more than interview techniques. We've taken what we've found because we know they work against us.

Collins: SERE never meant to be interrogation techniques. The irony here is that the SERE training is intended to help our troops resist inappropriate interrogation methods. By very nature of SERE training, we're trying to help our troops resist techniques that are not sanctioned.

Akaka: Shiffrin, circumstances surrounding original request. How familiar were you with

JPRA?

Shiffrin: I only knew of JPRA through another program. I knew what SERE was, but no more than you could get from reading a paragraph.

Akaka: Baumgartner, My understanding that assigned to SERE until 2003 and that as your last assignment, you brought oversight of internal processes. Prior to July request, had JPRA ever been contacted by DOD regarding this type of information. Was this unusual.

Baumgartner: Back in December, that was the first contact. The next contact early July, asked us for information on exploitation interrogation. We used it for training.

Akaka: Were the techniques briefed?

Baumgartner: Some were, but as to specific techniques, I don't know.

Akaka: How effective is resistance training given our own members. Haven't enemy combatants been given similar training?

Ogrisseg: WRT our training. We studied it. Our students are confident.

Akaka: Baumgartner, You were not privvy to everything. JPRA have ability to go to Commanders and Deputy Commanders. Why would decisions be made without COS input.

Baumgartner: You're not the gatekeeper for everything. Each Director has ability to go to Commander without going through COS.

Bill Nelson: Waterboard expressed extreme compliance techniques. Why don't you give further observations?

Ogrisseg: When I observed the Navy training, I watched their debriefing, following training, with these students that experienced it, the gist of the comments was that "If they had brought me near that thing again, I would have done anything they wanted to be done."

Nelson: Chairman said limited to 20 seconds.

Those Seals would know they would not be killed. It's to prepare them for it. Your observations of that are that at the end of the day, whatever the captor wants the captee to do, the captee is going to do.

Ogrisseg: Certainly they would comply with what was wanted. With waterboard, it doesn't take very long to instill very real fear of drowning, even if they know what the rules of engagement are.

Nelson: Lack of sleep. You haven't seen people deprived of sleep on whether or not the information would be good or not?

Ogrisseg: In training the skillsets that we want them to apply will hopefully degrade the quality of information they'll get.

Nelson: Under Field Manual. Detainee must get four hours of sleep each day. Al-Qahtani in late 2002 at Gitmo, deprived of sleep 18-20 hours a day for 48 of 54 days. Opinion of mental capacity?

[What does Bill Nelson not get about Ogrisseg's own expertise?]

Ogrisseg: I have no familiarity with subject.

Levin: Portions of my statement that I left out—paragraphs relating to Qahtani.

Ben Nelson: No one asked your opinion on torture.

Shiffrin: Above my pay grade. I never remember being aware of specific techniques.

Shiffrin: I don't recall having any concern that these techniques would be used. But then some of them were relatively benign.

Ben Nelson: waterboarding is not in that category.

Shiffrin: Never heard of waterboarding until I retired. Did not participate in discussion of specific harsh techniques.

Pryor: Baumgartner. Did the JPRA ever advocate using the SERE techniques in offensive manner against techniques.

Baumgartner: No, we provided the information. We have folks who have studied interview techniques.

Pryor: Would you, today, recommend these techniques?

Baumgartner: I'm not qualified to answer that. This has to be discussed by legal counsel and Admin officials far above my pay grade. Must be decided beforehand.

Pryor: When did you learn about SERE used for interrogation?

Baumgartner: It wasn't for training. So it was for something else. I had an idea they would look as a matter of policy what the US would use. Was not part of decision making process at all.

Reed: Did anyone ask you for list of physical methods.

Baumgartner: We had a request from DOD and another agency.

Reed: What other agency?

Baumgartner: That's classified.

Reed: Basic premise of SERE is that our enemies will not follow Geneva. If that's the premise, What logic of using those techniques for our detainees?

Baumgartner: Not qualified to answer that.

Reed: Premise is that our adversaries won't follow rules of war. You were training against real possibility that our adversaries would not follow Geneva. Thrust to prepare for worst case. These techniques probably per se violative of GC. Any question why they needed it? You just quietly, without raising the question?

Baumgartner: When tasked by OSD, if they needed

the information, I had no idea what they were going to do it. When I'm tasked to provide info they can legitimately have, I provide it.

Reed: Did anyone discuss this around the water cooler?

Baumgartner: We discussed it. It was of professional interest.

Reed: Did you think it would be a challenge how to integrate without violating GC?

Baumgartner: it's best if you do this beforehand.

Reed: Shiffrin, premise, would not follow GC.

Shiffrin: It's not something I thought about at the time. Training pretty wide-ranging. A lot of the discussion I was privy to, offer an inducement. Cable TV, extra pillow.

Reed: Those did not seem to appear in Category 1, 2, 3.

Sessions: Shiffrin, your position, who you reported to?

Shiffrin: DGC Intelligence for DOD in December 1997. Was at OLC. Had that position until I was demoted or transferred at end of 2002. Became acting GC at DIA.

Sessions: Aware that these techniques, based on request from Commander at Gitmo.

[Sessions trying to help out Haynes and Rummy]

Shiffrin: I had no knowledge of that.

Sessions: I know there will be other panels afterwards. On behalf of the military, this is what I understood happened. Three incidences of waterboarding, none at Gitmo, none by FBI. Military working to deal with small with group of indivs. One, 20th hijacker. They went through lawyers and reviewed some of these techniques. I would point out to my colleagues, this was all before Hamdan.

Shiffrin: I don't remember date of Hamdan.

Sessions: operating under leg supported by Leahy, Biden, Kennedy, and it defined torture, but it didn't just prohibit isolation or stress techniques, said you could subject someone to severe suffering.

Sessions: I would just say to the Chairman, whether these opinions were correct, whether SCOTUS changed the law. We've got a situation is that the people on the ground felt they were dealing with high value targets and DOD approved techniques they felt did not violate statute that prohibited extreme pain. Didn't say you couldn't stress them or things like that. For goodness sakes, it is not the kind of rogue activity that has been suggested. Our military felt they were threatened after 9/11. Wanted intell that could stop another group. Consulted legal system up to DOJ. Hopefully we can create policy we can all agree upon. Shouldn't disrespect men and women in Uniform.