

SENATE JUDICIARY HEARING ON TORTURE

Here's the committee stream.

Whitehouse: [link] Winston Churchill, truth always attended by bodyguard of lies. Sordid truth of torture accompanies by bodyguard of lies. Lies are legion. Bush told us America does not torture. Cheney agreed that waterboarding a dunk in the water. Former CIA said waterboarding once. Waterboarding determined to be legal, but not told how badly law ignored and bastardized, how furiously lawyers rejected OLC opinions. Couldn't second-guess CIA officers, now told led by contractors with a profit motive. [Enters Hayden statement on experience of torturers into record] I believe Judge Mukasey and General Hayden owe experienced interrogators an apology. Example of Zubaydah is false, as information given before torture. No accounting of wild goose chases. Legislators can't declassify. Though many of us in Congress knew lies were false, we could not reply. You criminalize conduct by making it illegal. Prosecution does not criminalize conduct, it vindicates it. First of series of hearings. I hope we'll soon be provided the OPR report, and hold more thorough hearings. How sad it is that there should be an OPR investigation into OLC. Thank Leahy for holding this hearing. Thank Feinstein, leading detailed investigation into Bush's interrogation program. Ali Soufan. Interviewed al Qaeda terrorists, threats have been documented, avoid photographing his face.

Graham: Nobility of the law or political stunt. I guess if we're going to talk about evil, we're going to have to talk about more than just the last Administrations efforts to fight evil. Would we have this hearing if we were attacked this afternoon? Or would we focus on repairing damage and staying ahead of enemy. We need to find out who was told and when. I'm calling for any memos that show information gathered from EIT be made available to the Committee so we can

see what worked. Many years after 9/11. The people we're judging woke up one morning and said, "oh my god, what's coming next." I've been a prosecutor most of my life, I know the difference between political disagreement and a crime. The idea that you'd consult your political opponents with a crime. As to Army Field Manual, to say that is the only way to interrogate is just not right. Let's bring CIA director into this hearing, he has already testify he would ask for techniques not in army field manual. I think this Administration's policy, at least through CIA Director's sworn testimony, include techniques not included in AFM. Members of Congress allegedly were briefed about these interrogation techniques. If you're trying to commit a crime, it'd be the last thing in your mind to go around telling people on the other side of the aisle about it. Levin report a good one, it's there to be read. Graham says that military will be prosecuted. As to others, Geneva Convention did not apply until 2006. We have today the best war crimes statute, would outlaw a "grave breach" of the Geneva Convention. McCain Amendment [which only codifies the 8th Amendment and so is not new] gives clear direction. Graham, Obama Administration very responsible view. I believe will ask for another continuance. I do appreciate what President is trying to do to repair our image. As we harshly judge those who had to make decisions we don't have to make, what we do in looking back may determine how we move forward.

Leahy: [link] This is one of the most important hearings the Senate Judiciary Committee will hold this year. I would urge Senators not to raise straw men and try to predetermine this hearing. Let's listen to the witnesses and not raise hypotheses not in the record. Chairman's background makes him eminently suited. How we got to a place where the OLC came to write predetermined and premediated legal opinions that allowed President Bush to authorize torture. Opinions that ignore our own laws and precedents. Purported legal bases, ends justify

the means, it is not reasoning that stands up. Hypertechnical that disregard the prohibitions in our law. All premised on President can be above the law. None of us as Senators, no one in this room. Senator Whitehouse deserves applause, commitment to rule of law. I'd like to go forward with non-partisan commission, but that's going to require support from both sides. Invited Bybee to testify. I did so after reading WaPo and NY, regrets about, the defended the opinions. Which Jay Bybee do we rely upon? He's declined through his lawyers, I assume he has no exonerating information to provide. He's talked to friends and colleagues, apparently the only people he has not explained his actions to are the people who granted him a lifetime appointment to the bench. We have to restore the trust in our govt. All Vermonters are proud Americans. I'm also proud that the USA has not been afraid to admit its mistakes. It's why the American people deserve to know what mistakes have been made.

DiFi: Last month the Obama Admin released four memoranda. Well within Judiciary Committee's jurisdiction, to make findings as to whether they fall within existing law. Listened very carefully to Graham. I do not agree. Prior Admin made the judgment that they [GC] do not apply, but they were repudiated by SCOTUS. As was the case with the program on warrantless surveillance restricted for years. Authors of these opinions may face certain sanctions. While DOJ can review, SJC does have responsibility of oversight of DOJ and how it interprets the law. Just as SSCI has oversight of 16 intelligence agencies. Intell exercising oversight responsibilities. Detailed review of conditions of detention experienced by HVDs, how techniques applied, by whom, what information produced, whether such info could have been obtained through other means, eval of whether the interrogation program complied with or exceeded the guidelines, and whether SSCI was accurately briefed and given a full explanation of what was happening around the world. This particular point is important given our oversight

responsibilities. Involves months of review, millions of unredacted cables and emails, substantial personal interviews. Work will be classified to get full scope of what has happened. Work will be done fairly and professionally and in strong bipartisan manner. Brief meeting with Soufan. He'll be asked at right time to come before Intell. 6 crossover members.

Feingold: [link] Enhanced interrogation program was illegal, contrary to national values. Like Chairman Whitehouse and Feinstein, nothing I have seen, including two docs to which Cheney has repeatedly referred indicate that torture necessary or best way to get information about detainees. Former VP misleading the American people, Further declassifications, including IG report, and work of intell committee, also sought declassification of my own correspondance, sent to Hayden detailing my clear opposition to the program. Absolutely essential if we are to return to the rule of law. Commission is needed.

Whitehouse: I also agree that the time will come that it becomes inevitable that nonpartisan committee take a look at this all and draw it all together. David Luban.

Luban: Opinions are ethical trainwreck. To tell it straight, without skewing. That can be hard thing to do, to say no to a client hoping for yes. OLC's job not to provide legal cover for illegal conduct. Unfortunately the torture memos fall far short of candid advice, in some places eccentric reading of law. Reverse-engineered to approve of these techniques. 26 years ago Reagan's DOJ prosecuted officers for waterboarding prisoners. Court of Appeals repeatedly referred to waterboarding as torture. Single most important precedent. But the authors of the torture memos never mentioned it. Hard to avoid conclusion that Yoo, Bybee, and Bradbury chose to avoid mentioning it bc it declared waterboarding illegal. Other ways torture memos distort the law. Bybee broad theory of executive

power, Goldsmith, extreme conclusion, no foundation in prior decisions. Comes very close to Nixon's statement, when the president does it, except that Nixon was speaking off the cuff. Medicare statute for torture.

Whitehouse: [introducing Zelikow] headed up 9/11 Commission, career foreign service officer at State and NSC staff.

Zelikow: I was working on counterterrorism before 9/11, looking both as scholar and policy maker, I do remember what it was like after 9/11, I've had some responsibility in having to make tough decision on the policy side. Reasons why we got into such a program. Collective failure, a lot of Americans felt they needed a program like this to protect the country. Collective failure, to learn from the mistake. I talk about our suspicions growing about them in 9/11 Commission, included recommendation designed to anticipate these issues. My getting involved more directly in 2005. During most of 2005, our work to get this to change—Rice, Bellinger, and I—a series of Deputy meetings, he clearly wanted his advisors to reevaluate all of these issues. Tried to get administration to agree to CID standard. Cruel and inhumane. Basic provision of law of armed conflict. Various battles that went on documented by documents. By December 2005, that battle had been won, internal work, McCain amendment. By early 2006, no way to avoid CID standard. Work of NSC deputies intensified. OLC had guarded against contingency of CID standard. It said the full program complied. [hey, I pointed this out] OLC also believed McCain was null. How to define meaning of CID standard. OLC said it should be interpreted by constitutional law. To challenge OLC's opinion, necessary to challenge constitutional interpretation. I had worked in area of law. US interpretation of ConLaw was strained and indefensible. Could not imagine any court agreeing that the entire program could be conducted and it would not violate constitution. OLC implications way beyond intl treaties, then a program would pass American constitutional

muster even if employed on American citizens.

Distributed at meeting in 2006. [This means it should show up in Presidential Records] Took off to Middle East. No further discussion. Internal debate culminating in Hamdan. Secretary Rice had argued again and again, defend the need for some continuing CIA program but would comply with relevant law. Left govt at end of 2006. Secty Rice remained deeply involved for following two years. US govt, over the past 7 years, unprecedented program, dehumanizing abuse, physical torment. A mistake, perhaps a disastrous one, a collective one, both parties played a part, endorsing physical coercion even after McCain amendment. precisely because collective failure, more important to understand it. We've been doing this under international standards for years. Our decision to respect intl standards does not appear to be a hindrance in this fight.

Addicott: Torture Convention primary document we're looking at here, in measuring CIA. When we signed CAT, we had certain reservations, an act must specifically intend to inflict mental or physical suffering. CIA interrogation did not constitute torture under international law. Ireland v. UK. Inhumane and degrading, ill-treatment, but not torture. One was wall-standing, practiced up to 30 hours. Hooding, placed dark hood over head of detainee. Noise, continuous loud and hissing noise. Deprived of sleep, food and drink. Considering level of interrogation standards in CIA, even worst, would not constitute torture. CIA method of waterboarding, same as what we've done hundreds of times in SERE. Senior legal advisor for all Green Berets in the world. My legal conclusion based on Ireland case is that we did not commit torture. Those who order or engage in torture must be criminally prosecuted. If we ignore Ireland precedent, we have to prosecute.

Turner: Like most JAG officers I've dealt with Senator Graham got this right from the beginning. Shortly after story of abusive treatment first broke, VOA wanting a comment. My

comment was it appears good people made very bad decisions. Coauthored article in WaPo entitled War Crimes in White House. One of my suggestions was that torture was not the international standard. Article 3. Spending a lot time deciding whether torture or not. Some things done since then made me furious, wanting to kick a wall. Decent, honorable, and able. Frightened. Some may think that good people can't do bad things. EO 9066, detention of more than 100,000 Americans without individual cause. Many of them never even visited Japan. Today we see as one of the most outrageous abuses since slavery. How could so many able people endorse such a horrible policy. I would submit the OLC lawyers acted from precisely the same motive. The title is "what went wrong." Part of problem is a general ignorance of intl law. Country been divided by basic principles of intl law. GC provides that prisoners of war tried by military courts. How could bright lawyers fail to understand that Common Article 3 did not apply. Torture lite. Not comparable to what was done in Vietnam. Not comparable to maiming done around the world. No one demanded a truth commission to go after FDR. They understood that people made bad decisions. That's what happened here.

Whitehouse: It sounds like you'd agree that greatest danger comes from zeal of those that are inexperienced. Security measures for Soufan. [5 minutes break] Former FBI supervisory special agent. Investigated highly complicated terrorism cases, including Cole and 9/11.

Soufan [behind a screen]: It was always clear that those of us on the front line had your support. Interrogation methods should not be a partisan matter. Best interrogation method possible that fits within framework of nation's principles. Spent much of my career unraveling terrorist cells around the globe. Govt's main witness in both trials at Gitmo so far. From my experience, mistake to use enhanced techniques. Slow, ineffective, unreliable, harmful of efforts to defeat al Qaeda. Abu Jendal. [Whitehouse introduces 302s from Abu Jendal]

Together with Robert McFadden. Trove of intelligence. It's included extensive information on OBL's network to details on individual operatives we later apprehended. Informed interrogation approach. Approach is based on leveraging knowledge of detainee's mindset, knowledge, and culture. Interpersonal, cognitive. If done correctly, works effectively. Using a method he is not trained to outwit. It's about outwitting the detainee. Sharp contrast to enhanced that tries to force submission. force compliance rather than elicit cooperation. Ineffective. AQ trained to resist torture. The torture they would receive done by dictatorships. Eventually detainee will call interrogator's bluff. The contractors had to keep asking for harsher methods. In case of AZ, continued for several months. 83 times, AZ had already called Az's bluff. WWithin first hour, gained actionable intelligence. Technique is unreliable. Don't know if just talking. Waiting 180 hours for sleep deprivation not work in ticking timebomb. Plays into enemies handbook. Recreates chinese wall. Taints sources. Diminishes moral high ground. Not to advocate the prosecution of anyone. It has not been easy to object to these uses when backed by powerful backers. I hope you help ensure these grave mistakes are never made again.

Whitehouse: Interrogation of AZ. You were present, first interrogators when AZ brought into custody outside of Pakistan. Within first hour, had gained actionable intell. At that point, his condition was such that hospital or die. At hospital you continued your questioning. During your questioning. KSM as mastermind. One of most significant pieces of intell. Before CTC team arrived. Then they arrived, on instructions of contractor, harsh techniques introduced, which did not produce results, AZ shut down and stopped talking. You knew we had good information. You were again given control. Used same techniques.

Soufan: Me, another FBI agent, top CIA interrogator. Combination of FBI and CIA, all

had the same opinion that contradicted with the contractor.

Whitehouse: Third interview, pursuant to appropriate tactics that AZ disclosed details of Jose Padilla. Contractor reasserted himself, reimplementing harsh techniques. AZ shut down, stopped producing information. Brought back to interrogate. Now more difficult bc of harsh techniques. Reengaged. AT that point contractor stepped up notches of his experiment. Might have to arrest.

Soufan: Borderline torture.

Whitehouse: Your participation ended.

Soufan: Asked by Mueller to leave.

Whitehouse: Page 10, OLC said: Interrogations of Zubaydah, once enhanced were employed, furnished key information. You've informed us that Zubaydah provided significant information, Padilla. From your position at interrogation, you know that statement not to be true.

Soufan: Yes sir.

Whitehouse: September 6, 2006, Bush said, Zubaydah defiant and evasive. During questioning disclosed nominal information. It became clear that Zubadaydah had training on how to resist. Does that accurately reflect?

Soufan: Environment, yes, injured medical care. President told half truth.

Whitehouse: Repeated half truth.

Graham: We've got four lawyers, all of whom are very bright, like VA, Mr. Soufan thank you for serving our country. I appreciate your view of how we should behave. As we go forward we should get this right. Is it your testimony that EIT yielded no good information.

Soufan: Can only speak about my own experience.

Graham: I think information out there that EIT yielded good information. Were you involved in KSM at all?

Soufan: No sir. After my stint with Zubaydah.

Graham: This idea that no good information acquired. Turner, GC, to me, has been a warehousing agreement between signatories.

Turner: That's exactly how I teach it.

Graham: problem with this war al Qaeda not signatory. The only way to find them and hit them before they hit us.

Turner: This is 90% if not more intelligence. In this battle a good police department could find AQ if we found them.

Graham: Addicott, is that right? Every other nation looks through law enforcement prism.

Zelikow: No, that's not right.

Graham: Any country that holds detainee under theory of armed conflict.

Zelikow: they don't because others are holding them under theory of armed conflict.

Graham: Interrogation by spanish police? Carbineri in Italy? Turner-interrogations common article 3 compliant? No police force in world that interrogates under Article 3. Reason we have adopted different theory. People we are prosecuting didn't rob a liquor store. Armed conflict restrict ability.

Zelikow: we need coalition standards for the fight. Work on standards interoperable with our allies.

Whitehouse: Interrogation with Zubaydah. Considerable conflict between one side, actionable information. Jose Padilla, Ashcroft had a press conference in Moscow. Often cast between trained professionals at CIA, and young interrogators at Army, and law enforcement constrained by Miranda. Two elements of framing wrong, very well that military and law enforcement trained professionals. You refer to other group as amateur Hollywood type. You had CIA professionals with you and wanted to continue, private contractor, not govt employee.

Soufan: Disagree that there was a conflict between FBI and CIA. Chief psychologist objected to techniques, left location before I did. Top interrogator in synch without our view, professional interrogator. This technique misunderstood threat we face from Islamic extremists. Ideologically motivated, expecting a lot, best way to deal is to be smart and engage with them, that's what provided a lot of actionable intelligence, we can talk about successes and failures. Successes that have been talking about are Padilla and KSM. Padilla after manhunt in 3 countries, on May 8, 2002, almost 3 months before imposed. We knew about KSM in April 2002. Basing on what I've been hearing.

Whitehouse: Luban, in your review, any mention of private contractors?

Luban: Specific mention.

Whitehouse: It would seem that might raise legal issues.

Luban: Also troubled by chronology, when Bradbury wrote that Padilla was enhanced interrogation, already public information. **Legal opinion stipulates something that public information showed to be untrue.**

Durbin: Rice and EO of 9/11 Commission. Amplify disclosures to leaders to Congress on interrogation techniques. Served in Intell committee for four years, warned not to breathe a word of it. Really briefed before the fact?

Zelikow: Feinstein, SSCI trying to break down chronology. What's supposed to happen is Memorandum of Notification, that lets key members know.

Durbin: After the fact?

Zelikow: it could be, should be after the program is initiated but before implemented.

Durbin: I recall Rockefeller hand-writing letter to protest this. Only way to create tangible evidence of his disapproval. Duty bound not to make disclosures. I raise this because many

people seem to be suggesting that if members are informed they are complicit. I've seen specific limitations. Do you understand the difference here?

Zelikow: as I listen to both sides. I will tell you on the inside, we were having heated arguments. The argument would be deployed against me that "well we briefed the following members of Congress." These briefings are being used in arguments within the Administration. Does the Congress think that the oversight process is working to their satisfaction.

Durbin: Not even close. Zelikow, opinion on closing Gitmo.

Zelikow: Gordon England and I wrote a paper on closing that facility.

Durbin: One detainee advised by email there were no charges against him. He is still in Gitmo. Indication to be of serious miscarriage of justice. Many arguing to maintain Gitmo. What do you think would be consequence if we kept Gitmo open.

Zelikow: Gitmo has become as much symbolism as substance. Everyone in America has heard of Alcatraz. Had become a symbol. Then we created supermax facilities. It doesn't become the same focal point of controversy. Gitmo had become in world opinion toxic problem Needed to address as issue of foreign policy.

Durbin: Could people be held safely?

Zelikow: Ramzi Youssef currently in supermax now. I've had opportunity to examine files on holding these people. We have a vast amount of experience in how to judge highly dangerous prisoners. We routinely make these decisions. That's a whole body of knowledge that hasn't been tapped very well.

Graham: Recidivism rate?

Zelikow: No reliable numbers, numbers range dozens, have been encountered again on battlefield.

Graham: Would that be a miscarriage of justice?
What if it was your daughter or son.

Zelikow: I'd feel as if it parole board
released, that happens all over the country.

Graham: Is there a difference between KSM and a
guy who robbed a liquor store. If you're waiting
for a member of Congress to bring them to their
state, you're not going to get that. We had
450,000 German and Japanese prisoners inside the
US. Decision to put them somewhere needs to be
well thought out. The idea that you have to let
them go or try them.

Turner: Durbin talking about being held for
years without being tried. Warehousing. Intl law
does not require that military combatants not be
charged. None of them got a day in court. Not
supposed to try in civilian court.

[Does this guy know diddly shit about history?]

Graham: if independent judiciary agrees with CIA
and military, there is no requirement to let
people go. Do you agree Addicott.

Addicott: My opinion closing Gitmo is a mistake.
It's saying we're torturing them. We're in a
state of war with these people.

Graham: I agree it's an image problem. Moral
high ground is place to be. I don't want to
treat these people with kid gloves. Once we
capture an enemy combatant, it becomes about us,
not them. We'll do things that they won't do to
us.

Addicott; The propaganda that we have tortured
people is a lie.

Graham: Waterboarding at 2002 was not clear what
law it violated. Difference between law
enforcement and intelligence gathering is a
different thing. Was your interrogation Common
Article 3 compliant, Soufan?

Soufan: Not after 9/11.

Graham: I would argue there was never an FBI
interrogation that was Article 3 compliant?

Soufan: I don't agree that everybody in Gitmo
enemy combatant. I don't agree that people
haven't been tortured in Gitmo. al-Qahtani, four
of the tactics later surfaced.