

SENATE ARMED SERVICES TORTURE HEARING, THREE

Graham: I understand from Schmitt-Furlow report that a dog was used in interrogation.

Beaver: I was not aware of it.

Graham when you said this didn't happen at Gitmo, you're not right.

Beaver: What was approved did not happen.

Graham Who did this?

Beaver: I don't know.

Graham it was part of interrogation plan. Also strip-searched in front of female personnel. Based on this report we know in at least one interrogation dogs were used a person was stripped.

Beaver I haven't read it, but I take your word for it.

Graham Mora, you spoke up, you continued to speak up, other lawyers continued to speak up, some of your criticism was listened to, they were ratcheted down.

Mora: I'm not sure

Graham They reevaluated the techniques, and a new group came up, Dalton. You were never involved in any final approval of new techniques.

Mora: that's correct. To my knowledge, I thought draft was never finalized, not part of final approval.

Graham Dalton, Do you ever remember Miller going to Iraq?

Beaver: asked me to travel with him.

Graham: Sanchez said we need better intell. Was

that the nature of the visit?

Beaver: A number of problems.

Graham: Any discussion of Muslims afraid of dogs? What did you tell them to do?

Beaver: I was appalled of detainees being held at core detainee area. I was disgusted that they were held like that.

Graham Do you think it's an accident that the techniques: stripping in front of female personnel and dogs?

Beaver I was surprised to see Col Wood in Iraq, she had been in charge in Afghanistan when two detainees had died. I went up the chain, I knew in a Geneva setting it could be a problem.

Levin: You've heard that what happened at Gitmo did not constitute abuse.

Mora: Abuse occurred and potentially torture.

Levin: What was authorized, do you believe that constituted abuse? Dogs? Nudity?

Mora: not under Geneva.

Levin: Did not want service's critical comments disseminated?

Dalton: Haynes did not want broad-based discussions of these issues.

Levin: did you read those memoranda objecting. those memoranda came before the decision of SecDef. This is one of the things that is new this morning. The protests came before and after 12/2/2002 memorandum. When that task force was appointed, prior to 12/2/02 those category 2 and some 3 techniques would be authorized, the JAG officers objected.

Dalton: Not all JAG.

Levin: From the services.

Dalton While they raised serious concerns. They suggested further legal and policy review.

Levin And you were undertaking until you were stopped.

Dalton Broad-based until you were stopped. I took it upon myself.

Levin: Weren't you asked to give a review?

Dalton That was part of my job.

Levin Concerns with most of category 2. Were you troubled when you read that?

Dalton [nothing]

Levin: Were you troubled when the Chief of Army's Intl Law div crosses line of humane treatment. You were being requested to approve something that in the judgment of that Chief would cross the line.

Dalton: Those were made without complete analysis being done. It was a concern. My own office had concerns. However, I felt we owed it to combatant commander to do a full review. Initial responses indicated there were concerns.

Levin You were stopped right in the middle of the review.

Dalton Of coordinating with the agencies.

Levin You were stopped during that review. Why's that so hard to say "yes" if you were?

Dalton I want to be clear that what I was stopped from doing was engaging in a broad and open discussion.

Levin You were stopped from doing what you thought was appropriate from doing.

Dalton I was stopped from conducting the review.

Levin That you thought was appropriate?

Dalton Yes sir.

Levin What was the purpose of the dog? It wasn't to scare?

Beaver: From perspective it was explained to me that purpose it could be used as perimeter

security and if that unsettled detainee, it would serve a dual purpose. I know you don't take dogs into detention cell. I was assured that that would not happen. I found out it happened. I was unaware of that at the time.

Levin: Was the purpose to keep the detainee unsettled? To induce stress?

Beaver: it may have.

Levin: Using detainees individual phobias such as fear of dogs to induce stress. That was the purpose stated in the request.

Beaver: I'm not disagreeing

Levin Dalton, did Haynes know services had real problems?

Dalton: those concerns were addressed without benefit of knowing what the safeguards would be. My staff briefed his staff.

McCaskill. Before you wrote your legal opinion you attended a meeting where counter-resistance was discussed. Do you remember that meeting?

Beaver: I started them in late August. They were my meetings. Brainstorming sessions. That there would be a more open discussion. That was a regularly scheduled meeting that Fredman who happened to come down that day, it wasn't held for him.

McCaskill So CIA lawyer just invited in for meeting already planned. I need to know whether you think this recollection is flat wrong and not true. Attributed to you: We need to curb the harsher operations when Red Cross around. We must have support of DOD.

Beaver: Mr Pryor asked a similar question. I do not recall anything I said. What I believe I would have said is that when you are conducting an operation, you can't disrupt an interrogation for this purpose.

McCaskill That's not what this said.

Beaver I don't think I would have said something

in that manner. They came in six week cycles. They might be there for six weeks. When they're not there, you would do your more aggressive interrogation.

McCaskill Why would there be a problem? Why would you delineate harsh?

Beaver I'm just using it in context of this conversation. There were many engagements like that.

McCaskill, written by CID of DOD. These are criminal investigators who are trained in taking accurate notes.

Beaver I can't recall what I said in a meeting.

McCaskill Part of their training is note-taking. Fredman said DOJ has provided much guidance. CIA not held to same rules. In past, DOD has moved them away from attention from ICRC. Upon questioning the DOD said Detainees merited no status under convention. Do you recall that?

Beaver: I don't recall with any kind of specificity. Qahatni, which the law enforcement folks had custody of him, FBI and CITF did not allow ICRC to speak to him. ICRC was allowed to see him in brig. In July August, this particular detainee had been of interest to law enforcement and intelligence community. I can't attribute anything Fredman said. DOD had different rules about ICRC.

McCaskill Chief interrogation control, Becker, videotapes subject to to much scrutiny in court.

McCaskil Law enforcement choose not to participate. It's more ethical and moral as opposed to legal. Fredman; Videotaping of even totally legal techniques will look ugly. The implication is that there are illegal.

Beaver What he is saying is even if you have a legal custodial interrogation can make people uncomfortable. Video taping unnecessary. Close circuit TVs, watch 24/7. When you've never witnessed interrogation.

[from audience I object to this line of questioning." Defense counsel for Beaver.]

Defense counsel: I object to my client being asked about what someone else said.

McCaskill I was asking you if these things were said in front of you, as the staff JAG, attributing some statements to you. Do you recall those statements being made. Fredman said this. In your capacity as the JAG at Gitmo Bay.

Beaver: non-attribution purposes so people could speak their minds and not worry about it being held against them. I wanted people to have a good collegial discussion. The law enforcement people were very unhappy with me. I thought it better to do in the light of day.

McCaskill. I think it important that law enforcement people were there, Like me, they have seen many many many interrogations. I think it important that they took notes. I'd like to read into the record. "This is the stuff Congressional hearings are made of. ... seems to stretch beyond the bounds ... would shock the conscience of this, someone needs to be considering how history will look back at this."

Beaver I invited them to put in writing so we could put it through to Miller, not a single person except in one occasion, came to me and said there's a violation of the law. They never came to me and said there's a violation of the law. If they felt the way at the time, they could have given me the same consideration I gave them."

Levin: Tab 11, a letter from CI taskforce, giving an assessment.

Beaver It was never shared with me. They never shared it in writing with me. Told by attorney at OGC that their objections were policy, not legal.

Levin You did not mean to suggest they never put it in writing did you? You were asked your opinion, they then were asked of their opinion.

Dated November 4, a month prior to SecDef signing his memo.

Levin: Did you work to develop SOP?

Beaver: No, done by folks at interrogation cell. I had nothing to do with that.

Levin were you familiar with it?

Beaver: I recall seeing it. Some of the personnel on the intelligence side were preparing an SOP, so they wouldn't be behind the timeline.

Levin Did you have conversations with them?

Beaver I told them they needed a SOP. What chain of command was.

Levin You never saw any of the drafts.

Beaver I can't say with certainty.

Levin If you can read on page 2. Basis used is SERE. Is it possible you saw this?

Beaver: Never left Intell sector. Miller didn't see it. Didn't ever receive serious consideration.

Levin: Did you participate in drafting?

Beaver: Gave them legal piece of it. List of things from my briefing. Not this SOP. One that listed the procedures approved.

Levin Have you ever been asked to stop analyzing something that came up for your review.

Dalton Previous incident where I was told I could not attend inter-agency discussions.

Levin Let me asked before—have you ever been asked to stop analyzing something that came up for your review.

Dalton No.

Levin Two questions, Mora. You heard my description of your activities that came in January. Was that accurate. When Sec approved on December 2, he was handed hand-written note that

said why is standing limited to 4 hours? What impact might that have?

Mora: I was shocked. Even though it may have been intended jocularly, it might invite people to go beyond limits.

Levin You said allies might stop supporting combat operations. That would put more troops in harms way. Do you have specific example?

Mora: One specific one, but I'd prefer to discuss in closed session.

Levin Meetings about Yoo memo.

Mora: One meeting. I felt memo was a travesty of applicable law. Very dangerous led into what we see here.

Levin You were not told of working group's final product. How did final memo influence working group report.

Mora It was dispositive of all issues in working group memo.

Graham I can see why this hearing is important. It's very hard to interpret this. Was McCain Detinee Treatment Act important?

Mora Yes.