

JIM HAYNES' REQUEST: A[NOTHER] LIST OF TECHNIQUES-INCLUDING WATERBOARDING

There's an interesting footnote in the Senate Report on Torture that suggests Jim Haynes **personally** went fishing for a description of waterboarding so it could be added to techniques approved by OLC.

Footnote 179—describing JPRA (the SERE people) receiving a request for descriptions of SERE techniques from DOD's Office of General Counsel reads,

Committee staff interview of Lt Col Daniel Baumgartner (August 8, 2007); see also email from Col Moulton to [redacted] (June 30, 2006) ("We [JPRA] initially received a call from OSD General Council (sic) requesting information about resistance techniques used against U.S. POWs. I believe this was early in Operation Enduring Freedom. We were requested to provide that information within hours and were authorized by JFCOM to forward it to OSD. ... Once we understood what OSD/GC was looking for, we provided a[] list of techniques.")

There are several things about this note. Colonel Randy Moulton, the head of JPRA, presumably in response to a DOD IG request, seems to refer to the December 2001 request from DOD's General Counsel (since that would have been "early in Operation Eduring Freedom"). He goes on to describe the process by which Jim Haynes' office asked for a list of techniques, suggesting that JPRA at first didn't understand what Haynes' office was looking for. And note the bracket: "a[] list of techniques." That

suggests a word beginning with "a" was shortened—the most likely possibility being "another." That suggests that JPRA may have submitted a list of techniques, subsequently learned that Haynes' office was looking for something else, and then submitted a second set of techniques.

That's interesting because there's a difference of recollection between Richard Shiffrin, then DOD Deputy General Counsel in charge of Intelligence, and Daniel Baumgartner, Chief of Staff for JPRA, that pertains to these requests.

First, the timeline the SASC Report describes surrounding the list of techniques is:

July 25, 2002: Shiffrin requests information for a "list of exploitation and interrogation techniques" from Baumgartner.

July 25, 2002: Baumgartner writes a memo in response to Shiffrin including lesson plans and describing JPRA's expertise on exploitation.

July 25, 2002: "Prior to the memo being delivered" to the General Counsel's office, Shiffrin calls Baumgartner again to ask for additional information, including a list of techniques used by JPRA at SERE school.

July 25, 2002: The memo is "delivered to Deputy General Counsel Richard Shiffrin by a JPRA employee."

DoD General Counsel Jim Haynes did not recall whether or not he saw the memo at the time, but said that "in all likelihood," he would have received the memo, and that the timing of the memo coincided with his recollection of his meeting with JPRA personnel.

July 26, 2002: A second memo completed

and delivered to Haynes' office. This memo—with attachments including a list of techniques, a memo on psychological effects of SERE techniques, and the CYA memo noting that torture is unreliable—would be sent to DOJ and CIA, and would eventually serve as the basis for the August 1, 2002 OLC memo authorizing torture.

Now onto the difference of recollection between Shiffrin and Baumgartner expressed at the SASC hearing on this last summer. Baumgartner claims that Shiffrin called, the July 25 memo **including psychological interrogation plans** was delivered, Shiffrin called back, then "a few days later" Shiffrin called back and asked for a list of physical pressures.

With respect to Mr. Shiffrin's July 2002 request, he contacted the JPRA and asked for information on interrogation resistance techniques used against U.S. prisoners of war. I asked my Commander, Colonel Moulton, for approval to support the request, which he granted. I then passed the request for support to our higher headquarters through USJFCOM J3 for approval. After USJFCOM approved supporting the request, I asked our resident JPRA experts for assistance in obtaining the information Mr. Shiffrin requested. **My response memorandum to Mr. Shiffrin included a couple of papers on exploitation, and interrogation and lesson plans** used to train our U.S. personnel (i.e., potential isolated personnel) **in the psychological aspects of detention**, exploitation-threats and pressures, methods of interrogation, and resistance to interrogations. After having the package delivered I believe there were some phone calls between Mr. Shiffrin and me to clarify parts of the package (I don't recall what the specific questions were, but essentially

they involved follow-up questions about the material I sent).

A few days later **I received another phone call from Mr. Shiffrin requesting information on the use of physical pressures**, which, after notifying Colonel Moulton, I provided. The information on the use of physical pressures in our personal recovery training consisted of a memorandum with information compiled from JPRA experts and one paper from an Air Force Survival, Evasion, Resistance, and Escape school psychologist, Captain (Dr.) Jerry Ogrisseg, on the effects of resistance training. I followed- up with one or two phone calls to make sure I had provided the information Mr. Shiffrin requested. I do not recall any further communications with Mr. Shiffrin or other DOD, OGC personnel about these issues after the July 2002 requests for information. [my emphasis]

Note some clear inaccuracies: the dates and the order of the phone calls (which Baumgartner should have known—the dates on the memos make it clear this all happened on July 25 and July 26).

But the really key difference is that Shiffrin says the request for more information came not in phone calls from him, but in a meeting between Jim Haynes and JPRA (Shiffrin suggests Baumgartner was at the meeting). And the language of the memo supports Shiffrin's version.

Mr. SHIFFRIN. **The memo refers to a follow-on question resulting from a meeting with JPRA and the General Counsel, OSD General Counsel.** That would be Mr. Haynes. I've never met, in person, Colonel Baumgartner before. I did not attend the meeting with Colonel Baumgartner. So, to the extent these

memos are responsive to requests at a meeting, I didn't attend that meeting.

Chairman LEVIN. All right. I think Colonel Baumgartner was referring to a phone conversation.

Mr. SHIFFRIN. **He did. But the memo itself says, "This is follow on questions from a meeting."**

Chairman LEVIN. I think, though, his testimony relates to a phone conversation.

Mr. SHIFFRIN. I understand. [my emphasis]

Now we know the meeting existed (Haynes admitted to it in a staff interview last year). So all the evidence suggests that Shiffrin is right in this disagreement—the request for a list of physical techniques came in a meeting with Jim Haynes directly (I'm guessing Baumgartner was protecting Haynes with his testimony).

Now look at the wider context of this. We know from the Bybee Memo that OLC gave CIA oral advice on the use of torture twice before it came out with the memo. The SSCI Narrative makes it clear that the first oral advice approved a range of techniques, while the second on approved waterboarding specifically.

On July 24, 2002, according to CIA records, OLC orally advised the CIA that the Attorney General had concluded that certain proposed interrogation techniques were lawful and, on July 26, that the use of waterboarding was lawful. OLC issued two written opinions and a letter memorializing those conclusions on August 1, 2002.

In other words, OLC had **already** approved "certain proposed interrogation techniques" before Shriffrin's first phone call to Baumgartner. The day after that approval, Jim

Haynes' office makes a high pressure request to JPRA for more information, which is delivered that same day. But then, apparently in a meeting between Haynes and Baumgartner, Haynes made it clear precisely what he was looking for: physical techniques. Physical techniques specifically including waterboarding.

All this is significant for several reasons. First, the timeline makes it clear that CIA already had pitched waterboarding to OLC—the request for a description from JPRA served either to make it look like it came from reverse-engineering SERE internally (as opposed to Mitchell, working off a purported al Qaeda manual), or because they wanted to hide the description they already had of waterboarding. Jim Haynes' personal involvement (predictably, he can't remember any of it) also shows how central the "War Council," including David Addington, John Rizzo, Alberto Gonzales, and John Yoo, was to this process. Rizzo had apparently already made the request for waterboarding, but he had to get Haynes involved at the last minute to somehow make waterboarding appear to be based on scientific principles and on SERE. And when JPRA didn't give Haynes what he wanted the first time, he explained to them, face to face, precisely what he was looking for.