

SENATE JUDICIARY HEARING ON TORTURE, TWO

Whitehouse: SASC report. Great deal of disagreement with OLC analysis. Mora called 2003 OLC memo profoundly in error. To extent that it relied on memo, did not include fair analysis. Chart based on OLC opinion. Green means go column. Read Admiral Dalton, that green column was wrong legally, embarrassing. At Haynes' direction, directed that OLC opinion supplant opinions of working group. Zelikow, you heard that copies of your memo should be collected and destroyed. What does that say?

Zelikow: Lawyers did not welcome peer review. Would shut down challenges even inside the govt.

Whitehouse: It's our nature to quarrel with each other. Is there any suggestion you would draw that they were less than perfectly confident with their views?

Zelikow: Arguments I was making were pretty profound, their whole interpretation of CID standard raises grave consequences. They had options. Let's take another look at this. Or, Zelikow, boy, this shows how rusty you are in practicing law. They didn't do either of those things, C, we don't want to talk about it.

Whitehouse: Luban. Lee decision. Texas decision. Addicott didn't cite it. Lee describes waterboarding as torture. In 93 pages, where they dig out medicare reimbursement, they don't find a case on point, in which the 5th circuit, calls it repeatedly torture. I've pressed the DOJ on this, bc I think it's unimaginable. AG Mukasey's response was that it wasn't relevant under Civil Rights Act, doesn't relate under CAT. At that time I was out of time. Civil RIghts Act has no substantive elements of its own. Vehicle for enforcing Constitutional violations. Leads directly to Constitutional

standards on torture. What OLC said about it—definition also founded on Constitutional standards of US. Impossible by Congress by statute, the statute criminalizing torture cannot create a definition of torture that narrows Constitutional definition. Distinction is yet another false device. They either missed case on point. I guess we'll find out from OPR which it was.

Luban: Lee case decided in 1983, before CAT and torture statutes. Not surprising that it didn't exist yet.

Graham: Would it be torture to put a spider inside a jail cell who was afraid of spiders.

Luban: Conceivably.

Graham: Would you say if we put a spider in the jail cell we were torturing them.

Luban: If we knew that spiders are deadly. An ordinary person.

Graham: Mr. Addicott has a different view about torture. Do you think he is unethical.

Luban: I think he would be unethical if he

Graham: You're basing your opinion that he didn't cite a case. Is that what this came down to? Is that what you're telling this committee? How could Mr. Addicott come to an entirely different definition.

Luban: The Ireland case is not the only European case.

Graham: The fact that you didn't tell me about the Ireland case, can I assume that you are unethical.

Luban: Im not telling you about what is right and wrong.

Graham: You know what I don't think you're unethical.

Addicott: I've got further bad news for Soufan. Individual who was interrogated while in

hospital case. Stevens said that was torture.

Whitehouse: You're not suggesting it's torture to question in a hospital. You think it stands for the proposition that any interrogation in a hospital would be torture.

Addicott: that's what he says in his opinion.

Graham: Do you know a gentleman named Kiriakou? He gave an interview that said Zubaydah, they waterboarded the guy and he broke within 35 seconds.

Soufan: He retracted that last week. That's one of the things that was mentioned before, and now we know it was 83 times.

Graham: No good information?

Soufan: I would like you to evaluate what we got before.

Graham: I'd like to have both sides of the stories. Apparently they work.

Soufan: It's easier to hit someone than outsmart them.

Graham: Your testimony is not a complete repository of what happened with high value targets.

Whitehouse: He hasn't represented himself as anyone else who can represent his experience.

Graham: Do we need to keep doing this? We're going to make this chilling to the next group that needs to defend this nation. Wrong for Obama to authorize outside AFM?

Soufan: I believe they should ask other professional interrogators.

Graham: Do you believe Panetta qualified for his job. Wyden asked if urgent information. In that situation, ticking time bomb. I think we'd have to do everything possible. Obviously whatever was being used, was not sufficient, I would not hesitate whatever authority needed. Would the POTUS be wrong in considering request beyond

AFM, that were lawful.

Soufan: Key quote within the law.

Whitehouse: Add following statements into record. Professional interrogators. Close with words of Matthew Alexander. Led team that located Zargawi. At the time we killed Zargawi, he was highest priority, higher than OBL. Lack of evidence that abuse is faster. That method only served to harden resolve of detainee. Second argument against, number one recruiting tool. Majority state the reason they came to Iraq to fight was because of abuse at Abu Ghraib. Not an exaggeration to say that hundreds if not thousands of Americans died because of these techniques. Learned quickly that AQ had much more in common with traditional criminal organizations. Non-coercive subterfuge to great success. I also want to address ticking time bomb. Lived through this every day. Most had knowledge of future bombings. What works best is relationship building. Not time-consuming. Building relationship with prisoner not time consuming. 10-15 minutes, relationship building and deception. It is about being smarter not being harsher.

Graham: These interrogation techniques were shared with members of Congress who somehow can't remember what they were told. That's the best evidence that they were trying to make policy, not break the law. If we keep doing this, bring in people to say, let me tell you what I got, we will tear this country apart. The British may not have tortured people in N Ireland. They were legally not torturing people. They made a mistake when it came to winning over the people of N Ireland. If we restrict us to the Army Field Manual, it is the Field Manual to protect themselves. It was never written to be the end-all and be-all of how you protect this nation. If we put it online, and that's the only way you can interrogate anyone, we're stupid. We have put people in Gitmo that were not enemy combatants. Some people let go that should have never been let go. Allow us to hold up our head

to say no one is in Gitmo because Dick Cheney said so. I'm so afraid that we're putting men and women at risk who did nothing but their best to try to defend this nation.