

HEARING OF THE SENATE ARMED SERVICE COMMITTEE SUBJECT: DETAINEE INTERROG

Are you familiar with those coercive techniques?

ADM. CHURCH: I think we're referring to the same incident, sir.

SEN. LEVIN: Would you agree those were coercive techniques the way the FBI described them?

ADM. CHURCH: There were a couple of interrogations that I would classify as humane but coercive.

SEN. LEVIN: Finally, the Schlesinger panel — by the way, do you have a copy of that in your classified report, of those documents that the FBI was referring to?

ADM. CHURCH: I believe it's in the back of the material, sir. If not, we'll get it.

SEN. LEVIN: Did you talk to those FBI agents about that, what they saw at Guantanamo?

ADM. CHURCH: We talked to folks that were with them. We talked to members of the criminal investigative task force and CIS. They were all working collaboratively. So I'm very familiar with the incidents you're talking about

SEN. LEVIN: And you've talked with people who actually witnessed it in the FBI?

ADM. CHURCH: Not specifically, but I've —

SEN. LEVIN: Finally, the Schlesinger panel found that abuses were widespread, and "the abuses were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels." That's Schlesinger. Do you agree with that finding of the Schlesinger panel?

ADM. CHURCH: Yes sir.

SEN. LEVIN: Pardon?

ADM. CHURCH: I do.

SEN. LEVIN: And have you identified anyone at higher levels who bears personal responsibility?

ADM. CHURCH: I have to give you a little bit of a longer answer, Senator. I worked very closely with the Schlesinger panel. And as we worked together, it evolved that the issues of responsibility needed to be addressed. That was not in my charter. So it was understood that Schlesinger panel were going to make those calls. SEN. LEVIN: Alright, thank you. Thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator Inhofe?

SEN. INHOFE: Thank you, Mr. Chairman. I know, Admiral Church, that you're, the scope of your work goes far beyond Abu Ghraib, but I'll confine my questions to just Abu Ghraib.

First of all, I want to thank my colleagues who've been very nice to me, in spite of the fact that on May 4, 2004 I was the skunk at the family picnic, and the picnic's still going on. And I haven't changed my opinion at that time. I felt, and I still feel today, that that relationship between the quality of interrogation and the quality of intelligence in American lives is there, and it's very important. Let me first of all — it's been, it was my understanding then and it's my understanding now that the detainees that were held in Abu Ghraib, now specifically say in cell blocks 1A and 1B were either actively involved in operational planning for attacks against our coalition forces or had already participated in attacks against our forces. They were working on behalf of former Ba'athists now acting as insurgents or on behalf of terrorist leaders from outside of Iraq, such as Zarqawi. Is that your understanding?

ADM. CHURCH: That's my understanding, sir.

SEN. INHOFE: I have several question, and they can just be short answers if you would do that for me, Admiral. First of all, we've outlined the number of investigations and reports that have been coming. Some commentators have dismissed several of the previous reports as whitewash or cover-up. Did you come across anything that would cause you to believe or suspect that any of these officials who conducted these investigations were pursuing an agenda other than seeking the truth? Did you find any evidence of that?

ADM. CHURCH: No sir, I did not.

SEN. INHOFE: Regardless of whether you are talking about properly approved techniques or improperly approved

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techniques, did you ever find anything that sanctioned the practices that showed up in the incidents and photos at Abu Ghraib?

ADM. CHURCH: Senator, that was one of the key findings of the report, that none of the instances that we saw, in particular Abu Ghraib —

SEN. INHOFE: Can you pull that mike up a little bit? Your voice is just not projecting.

ADM. CHURCH: Yes sir, I'm sorry. That was one of the key findings of my investigation, that none of these abuse cases that have been highlighted, that we are all familiar with, bore any resemblance to any policy or interrogation technique that was ever considered or authorized.

SEN. INHOFE: Yes, I know that, but I think it's a key point that's worth repeating. Is it fair to say that whatever confusion there might have been, no one could have reasonably believed that what we saw in those photos was in accordance with approved practices?

ADM. CHURCH: There's been a lot of discussion on the word confusion. Regardless of which copy or which operative, standard operating procedure an interrogator was using, none of the abuses that we saw would've been condoned.

SEN. INHOFE: Alright, sir. Did you ever find any evidence to support the allegations that commanders preferred to look the other way, that's a quote out of some of the accusations, rather than investigate abuse if they could get away with it?

ADM. CHURCH: We did not find that.

SEN. INHOFE: In the winter and spring of 2003, there was a working group that was led by Air Force General Counsel Mary Walker that reviewed the law on interrogation practices and made a recommendation to the Secretary of Defense on what techniques should be allowed at Guantanamo Bay. How many techniques did the working group recommend, and how many did Secretary of Defense approve? Isn't it correct that the Secretary of Defense approved for use, fewer than the total number of interrogation techniques approved by the working group? In other words, his directive was narrower than what the group concluded the law allowed?

ADM. CHURCH: The working group sent forward 35 interrogation techniques based on advice of general counsel recommending restraint. The Secretary of Defense approved 24.

SEN. INHOFE: All right sir. You know I can recall when even back in the days I was in the House of Representatives, certainly many years ago when I came to this body. Certainly on the intelligence committee — and human intelligence went out of vogue for a while. There's an idea that somehow we're abusing people and when we're going after human intelligence. It should be done electronically or by some other means.

In your report, you say that intelligence gathering, particularly human intelligence, has assumed greater importance in the war on terror. I would like to have you explain why it's assumed a greater role like in this particular war on terror than in previous uses.

ADM. CHURCH: It's the nature of the enemy, sir. We don't know who they are, where they are. If we're going to learn anything about what might be around the corner, we have to have intelligence, and it's human intelligence that's going to be key.

SEN. INHOFE: Sir, can you think of any group that you might come upon where the potential of human intelligence would be any greater than those who were incarcerated with the detainees in cell bloc 1A and 1B of Abu Ghraib?

ADM. CHURCH: That would be one good example. Certainly —

SEN. INHOFE: — fertile field for intelligence gathering, yes.

ADM. CHURCH: Certainly the detainees at Guantanamo Bay would fit that criteria.

SEN. INHOFE: And I would assume that you would agree with me that there is a direct relationship between the quality of intelligence and American lives, our men and women in uniform?

ADM. CHURCH: We know that for a fact by some of the intelligence that we've gained.

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SEN. INHOFE: You've done great work and I thank you for your service. Thank you Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator Lieberman?

SEN. LIEBERMAN: Thank you Mr. Chairman. Admiral Church, good morning and thank you for your work. I wanted first to put in some perspective the cases that you investigated because while no case of abuse is tolerable by this country, whereas everyone has said and agreed we live by the rule of law, even in the most difficult of circumstances, times of war, times of war on terror. I think it is important as we react, particularly to the pictures of Abu Ghraib that Chairman Warner referred to about the numbers here. Am I correct as I saw in one section of the unclassified version of your report, that your estimate is that there have been more than 50,000 detainees thus far in the global war on terror?

ADM. CHURCH: Yes sir. At a point in time that was the figure.

SEN. LIEBERMAN: So probably more now, but there was a point in time you wrote September 30th of '04, that would include Iraq, Afghanistan, Guantanamo, and then other places where detainees may be held.

ADM. CHURCH: That was the best estimate, yes sir.

SEN. LIEBERMAN: And as a result of your investigation, you identified 70 cases of abuse that were substantive cases of abuse?

ADM. CHURCH: Yes, sir. We reviewed what the Naval Criminal Investigative Service and the Army Criminal Investigative Service had, which included reports from the field as well as the criminal misconduct. We reviewed everything we could get our hands on.

SEN. LIEBERMAN: Right. So my point is that 70 cases out of 50,000 detainees is about one-tenth of 1 percent of the detainees, and it justifies your conclusion that in the overwhelming majority of cases, detainees to the best of our knowledge now, have been treated within the standards that we in American would want detainees to be treated.

To go one level forward, your judgment as given to the committee today, that there were 20 of those 70 cases of abuse that you found to be real, were associated with interrogation. Then we're at about one-twenty fifth of one percent of all detainees. I just say this not to minimize the offenses, but simply to put them in perspective that most of the American personnel, service men and women who are holding detainees and in fact interrogating them, to the best of our knowledge, are acting within the law. Is that your conclusion?

ADM. CHURCH: That's absolutely correct, senator.

SEN. LIEBERMAN: Let me ask you a factor related to the way you conducted the investigation. I was interested that you did not interview any of the detainees, but you did base a lot of your work on the report of the International Committee of the Red Cross, which is certainly in our perspective an advocate or a protector at least of the detainees. Could you explain why you did not talk to any of the detainees?

ADM. CHURCH: First of all the scope of the investigation really was to try to catalogue and document all the interrogation techniques. So that was where we started, and as we expanded I felt that ICRC reports, that all the working papers, would give me a pretty good feel for what the detainees' complaints were. And we'll get into this in the next section, session, but from looking at all the ICRC reports, I got a pretty good feel of what the complaints were and what the reactions to those complaints were; were they being followed up and that was the purpose of that particular section.

SEN. LIEBERMAN: General Casey the other day — and there is some reference to it in your report — that recently issued a set of new procedures regarding the handling of detainees and which techniques were available appropriately to those carrying on interrogation or just holding of the detainees. Could you elucidate for the committee at this time, in some detail, about what those additional safeguards are, pursuant to General Casey's directive?

ADM. CHURCH: Senator, I'll have to get back to you. I did read that. That was subsequent to our investigation. I know he's come very much in line with doctrine 3452 and put in a number of safeguards and also clarifies some ambiguities that he felt were left over from the previous guidance.

SEN. LIEBERMAN: Just for the record, give us a brief description of what doctrine 3452 is.

ADM. CHURCH: Sorry. That's the basic interrogation doctrine that the services all use. It lists 17 techniques starting with direct approach and that's what was in effect for a good part of the initial global war on terror before we started expanding that.

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SEN. LIEBERMAN: I want to go back to the overall view and the perspective through which you look at this, and I quote from your unclassified executive summary. "Any discussion of military interrogation must begin with its purpose, which is to gain actionable intelligence in order to safeguard the security of the United States. Interrogation is often an adversarial endeavor. Generally detainees are not eager to provide information and they resist interrogation to the extent that their personal character or training permits. Confronting detainees or interrogators whose mission is to extract useful information as quickly as possible, military interrogators are trained to use creative means of deception and to play upon detainees' emotions and fears when conducting interrogations of enemy prisoners of war who enjoy the full protections of the Geneva Convention. But people unfamiliar with military interrogations might view a perfectly legitimate interrogation of an enemy prisoner of war in full compliance with the Geneva conventions as offensive by its very nature."

Obviously some of what we saw in Abu Ghraib, and some of what you've described go well beyond that. But it is important to set it in that context.

I wanted to ask you this question in terms of detainee interrogation and the global war on terror. Do the existing procedures that govern interrogation make any distinction between — and I understand this can be a slippery slope — between detainees who may have general knowledge of enemy plans and detainees who we have reason to believe may have knowledge of an imminent terrorist operation?

I know that there are circumstances of a so-called ticking time bomb case where in other countries which attempt to live by the rule of law, the standards of the nature of an interrogation of a detainee can be quite a lot more aggressive if there's a conclusion reasonably arrived at that the detainee has knowledge of the allegorical ticking time bomb, and if you break that detainee, you can stop the bomb from exploding. Do our procedures now allow for those kinds of distinctions?

ADM. CHURCH: I'll try to answer that, sir. The policies, the doctrine, the approved interrogation techniques wouldn't change based on what you know, the value of the intelligence of the detainee. What might change is the interrogation plan of how you approach that, how you might use techniques in combination to try to get the information you use. Each interrogation plan might be different. I doubt you would waste much time on somebody who is of little intelligence value but you would probably spend a lot of time on somebody who had actionable intelligence that might save time.

SEN. LIEBERMAN: Thank you Admiral. My time's up. Thanks Mr. Chairman.

ADM. CHURCH: Thank you, sir.

SEN. WARNER: Senator McCain?

SEN. MCCAIN: Admiral, thank you for your report. Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?

ADM. CHURCH: Yes, sir.

SEN. MCCAIN: In your mind there's no doubt?

ADM. CHURCH: There's no doubt in my mind.

SEN. MCCAIN: Is there in your mind a difference in the status of a Taliban prisoner who was captured in the war in Afghanistan and that of a terrorist who is apprehended in Omaha, Nebraska? In other words the Taliban guy, fighter, eligible for the Geneva Conventions for the treatment of prisoners of war and is the terrorist caught in Omaha eligible?

ADM. CHURCH: The latter is, the first — as you remember from the president's —

SEN. MCCAIN: The latter is eligible for Geneva Conventions —

ADM. CHURCH: A terrorist caught in the United States? He's not a prisoner of war so he wouldn't fall in that category.

SEN. MCCAIN: Okay. Is the Taliban prisoner fighting for the then-government of Afghanistan eligible for the Geneva Conventions for the treatment of prisoners of war?

ADM. CHURCH: As you'll remember, the president said the Taliban cannot conduct themselves in a matter where they would be considered party to the Geneva. So the answer to your question is no.

SEN. MCCAIN: So the president of the United States has decided that the Taliban even though there was a government recognized by some in Kabul, is not eligible.

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ADM. CHURCH: He made that determination, yes sir.

SEN. MCCAIN: You know that North Vietnamese made the same determination about American prisoners?

ADM. CHURCH: Yes sir?

SEN. MCCAIN: But the Geneva Conventions clearly state that those who are fighting for a country and — in other words, in my view, those who were fighting for the Afghan government, whether they were Taliban or average citizens, they were fighting in the army of that government of Afghanistan. How do you argue that they're now?

ADM. CHURCH: I'm not sure that I am specially qualified to have the legal debate with you sir, but — SEN. MCCAIN: Well I'm not having a debate with you, I'm asking a question, and you of all people should be well versed on what eligibility, treatment, under what conditions should be.

ADM. CHURCH: I am, and I understand what the president said. He also said that all would be treated humanely and consistent with military necessity in accordance with Geneva. So Geneva underpinned all of this.

SEN. MCCAIN: So the United States policy now is that we decide when we are in a conflict whether the combatants of that nation are eligible for the Geneva Conventions or not?

ADM. CHURCH: You know senator — In Iraq Geneva EPW applied. In Afghanistan, detainees in Gitmo, there were different rules.

SEN. MCCAIN: So you've got somebody who has captured — different rules for — so you've got somebody captured in Baghdad who was fighting for Saddam Hussein and they're sent to Abu Ghraib or another prison facility. Next to them is a combatant who was captured in Afghanistan in the same cell. There's different treatment for those two prisoners?

ADM. CHURCH: There'd be no different treatment in Guantanamo but the difference between — the applicability of Geneva would be different.

SEN. MCCAIN: Say that again.

ADM. CHURCH: The different categories were —

SEN. MCCAIN: Let me give you this example. Saddam Hussein's army versus Taliban army, both in the same prison.

ADM. CHURCH: Different rules apply and as for al Qaeda, they're different

SEN. MCCAIN: Doesn't this get a little confusing for the people who were in charge of developing specific policies for treatment of prisoners?

ADM. CHURCH: I did not find that.

SEN. MCCAIN: It's no problem.

ADM. CHURCH: I did not find that for the interrogators that was a problem because they had the basic underpinning? That human treatment was to be observed at all times and they used the same set of techniques for the interrogations. So by the time it translated down to the interrogation piece that I was looking at, I didn't see much of a distinction?

SEN. MCCAIN: You didn't see much of a distinction?

ADM. CHURCH: No —

SEN. MCCAIN: Don't you think there are specific protections under the Geneva Conventions for the treatment of prisoners of war that should not apply to terrorists?

ADM. CHURCH: I think I agree with you sir.

SEN. MCCAIN: My point here is, Admiral, that I don't believe that it is clear the difference in policy towards treatment of those who are eligible for the Geneva Conventions, the treatment of prisoners of war versus those that are not. I don't argue that Mohammed Atta is not eligible for the Geneva Conventions protection. What I am saying that unless you have specific guidelines then obviously if you treated those both the same, you either not doing quite maybe what you should to the terrorists, and maybe not enough to protect — to be in compliance with a treaty that we signed. And I worry Admiral, very much, that if we decide that a certain country's military personnel are not eligible for treatment under a convention that we signed, then wouldn't it be logical to expect then they would declare as the North Vietnamese did, that

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American prisoners are not eligible for protection under the Geneva Conventions?

ADM. CHURCH: Those were the arguments, yes sir.

SEN. MCCAIN: Well what's your opinion?

ADM. CHURCH: My opinion is that the president made the right call.

SEN. MCCAIN: So everything's fine?

ADM. CHURCH: No sir. I said, I don't believe al Qaeda should have been eligible because they don't meet the criteria.

SEN. MCCAIN: Nor do I. Nor do I.

ADM. CHURCH: And I don't believe that the Taliban, by their behavior, should have been eligible for EPW treatment.

SEN. MCCAIN: Certainly the German SS shouldn't of been eligible.

ADM. CHURCH: They wore a uniform sir.

SEN. MCCAIN: These guys wore a uniform of sorts.

ADM. CHURCH: But their behavior didn't, didn't meet the criteria for EPW.

SEN. MCCAIN: But the SS's divisions' behavior was okay?

ADM. CHURCH: Sir you asked me for my opinion, and it's a good debate. That's my opinion.

SEN. MCCAIN: Well sir I think it's a little bit more than a good debate because I think this nation may face other conflicts in the future, and I'm very concerned about what might happen to Americans who are taken prisoners unless we have clear and specific guidelines that we adhere to, including the Geneva Conventions, where applicable under international law. I thank you. Mr. Chairman?

SEN. WARNER: Senator Kennedy?

SEN. KENNEDY: Thank you very much Mr. Chairman.

On page 124 on your report Admiral Church on the unclassified paragraphs you describe the initial meetings of Haynes working group and their briefing from the office of legal counsel on the applicable law. Your report states, that fairly early in the working group process, the OLC the draft legal memoranda was presented to the action officers as the controlling authority for all questions of domestic and international law. This memoranda was basically the Bybee Torture memoranda, and you said that the working group expressed a great deal of disagreement with the OLC analysis. In your report, you write that members of the working groups were only permitted to read the memoranda in Mr. Haynes or Ms. Walker's offices, initially without taking notes. In addition you write that your investigators were not allowed to obtain this crucial memoranda either, but only could review it without taking verbatim notes. This memo has never been provided to the committee, despite our requests. This issue also highlights the involvement of Mr. Haynes. Now the memo was — you said the working group expressed a great deal of disagreement of the OLC analysis. They said interrogation techniques should follow Geneva Conventions, the conventions against war and U.S. law. Now that's not what the Haynes group finally recommended. So Admiral, could you tell us how this dispute was resolved, were the members of the working group overruled?

ADM. CHURCH: Thank you for the question senator. I want to state initially that the value I think of my investigation is that I lay all this out. This has never been laid out before, so that we can understand exactly everything that went on in the determination of these techniques.

As I did my research, I came to understand that what the justice department had said was in fact binding on the Department of Defense. So that was the legal underpinning that this group began working on. They ultimately, working through that, recommended 35 techniques. The secretary of defense approved 24, but again, there was the underpinning of humane treatment that was not only in the memo but also in the consideration. But you're correct, sir.

SEN. KENNEDY: Well, I am not sure I'm correct about what I'm correct about. You said the working group expressed a great deal of disagreement about the OLC analysis, and they said the interrogation should follow the Geneva. Now I was asking how was that issue resolved? Here you have a number of the people that have had responsibility or trained people, the JAG I imagine other lawyers, that express a great deal of disagreement. Those are your words. Eventually this

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issue was resolved and I am asking you about how that was resolved and who resolved it? Was it just resolved by Haynes.

ADM. CHURCH: It was resolved by, I guess the chairman of the committee Ms. Walker, basically said we're not going to revisit the decisions of Justice; we are going to move on. So they moved on and they started looking at techniques, and as they looked at the 35 techniques, they assessed those in numerous categories dealing with humane treatment versus how this would be perceived internationally and in many other categories. So the short answer, Senator they moved on. They accepted what the legal starting point was.

SEN. KENNEDY: Well I know they've moved on, and I'm familiar with the working group published, and how they published virtually identical to the Bybee amendment, I'm familiar. The point I am trying to find out is who made the judgment? When you had talk about a great deal of disagreement with the OLC, who was the one who made the call on this? Who was the one that finally said, when there was disagreement in your own words, a great deal of disagreement and as we all know that from other memoranda, there was an enormous amount of disagreement. Someone finally made the call that what they were going to do is in the working group, they would actually print exactly the words in Bybee amendment. I'm just asking you who made that call.

ADM. CHURCH: I believe the answer was, the office of the general counsel.

SEN. KENNEDY: That's Mr. Haynes?

ADM. CHURCH.: It is, but I'd like to add one thing. I looked at that very closely, and that's why I came to the conclusion, because I questioned the same thing, and the lawyers made those issues that the rulings of the Justice Department were binding on the Defense Department, and that's what I called in my investigation. So it was not a bad call.

SEN. KENNEDY: I can understand and appreciate your position. Many of us understand that it was the CIA went to Mr. Gonzales with the understanding of Mr. Haynes to request this memoranda from OLC, and that Mr. Gonzales talked to OLC during the course of the preparation of this? This has been laid out in different hearings. And then finally they came back, the Bybee amendment came back and this was just fine with the CIA and with the DOD, and it was sent on over and the record shows that there were many in the JAG and otherwise that did not feel that it did not feel that it followed the Geneva Conventions, and you expressed a similar opinion about this. I want to know who within the DOD made the call on it, and it's quite clear now that it's Mr. Haynes who's the general counsel on it. That's basically what I am trying to have.

My time is up, Mr. — unless there's something you want to add to that.

SEN. WARNER: Let the witness finish the answer, yes, please.

ADM. CHURCH: No, sir, I think I've answered the question. I did go down this road, as I mentioned, to try to see if that was in fact an appropriate determination, and ultimately concluded — and I think it's in the report that it was — that memo, of course, as we all know, has, you know, now been discredited in different —

SEN. KENNEDY: Well, it was in effect for 2-1/2 years.

ADM. CHURCH: You're correct, Senator, it was.

SEN. KENNEDY: So — but it took some time before it was.

ADM. CHURCH: Yes, sir.

SEN. KENNEDY: Thanks, Mr. Chairman.

SEN. WARNER: I thank the Senator.

Senator Talent.

SEN. JAMES TALENT (R-MO): Thank you, Mr. Chairman.

I want to thank you for your service, Admiral, in what's undoubtedly been a very difficult and trying endeavor.

I just want to refer you to page four of your report when you — the narrative recites how in the fall of 2002 the belief on the part of our interrogators at Guantanamo was that the techniques they had were inadequate, and they asked for permission or further guidance to use other techniques. And SOUTHCOM commander approved 19 counter-resistance

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techniques that were divided into categories 1, 2, and 3. And I was curious in reading it because originally, the secretary's decision only allowed one Category 3 technique, which was authorization of mild, non-injurious physical contact, such as grabbing, poking in the chest with a finger, and light pushing. That was originally allowed and then subsequently disallowed. And the Category 2 techniques were subsequently disallowed. So I'm wondering, what were some of the Category 2 techniques that were subsequently disallowed?

ADM. CHURCH: I'd have to refer quickly to the memo.

(To staff) Can we do that?

SEN. TALENT: Sure. Could you do it quickly? Or one of the other folks there?

I'm wondering, because Category 3 techniques — and maybe I don't understand interrogation very well — but grabbing, poking in the chest with a finger, I mean, that's not normally what I would think of as torture. That used to happen in settlement negotiations when I was practicing law rather a lot. I've seen worse at conference committees.

ADM. CHURCH: Well, you're correct, the —

SEN. TALENT: I presume Category 2 techniques were milder than the Category 3 techniques?

ADM. CHURCH: That's correct, sir. They were tiered —

SEN. TALENT: Yeah. So what — I mean, give me an idea of what was the Category 2 techniques that were originally approved.

ADM. CHURCH: I'm sorry, these are all running together after 9 months.

SEN. TALENT: Yeah, sure.

ADM. CHURCH: Stress positions —

SEN. TALENT: Stress positions, like standing at attention for a while?

ADM. CHURCH: Or in a kneeling position. There's various interpretations of that.

Use of hooding. Removal of clothing was actually one. Use of detainees' individual phobias. There was 14 initially in the list.

SEN. TALENT: Okay. And the reason why the original request went up to SOUTHCOM and then to the Joint Chiefs, the chairman, Chairman Myers or General Myers, and then to the secretary of Defense, was that they thought they weren't getting enough intel, because these guys had been trained to resist effectively the techniques, and it doesn't surprise me that they would have been able to resist these techniques. Well, Category 2 was permitted, but then subsequently that was revoked. So Category 2 wasn't permitted either, right?

ADM. CHURCH: That's correct, sir.

SEN. TALENT: Well, Mr. Chairman. Senator Lieberman and Senator Inhofe spoke for me. There was a VBIED that went off in Hillah, as you know, Mr. Chairman, two weeks ago — 150 Iraqi recruits to the police were killed — 500 IED attacks a month, 750 Americans lost in Iraq because of that. This is a subject that I have investigated personally, and I know you have to, Mr. Chairman, and we have on the committee. And everybody I have talked to who is in the business of fighting IEDs — in our military, in our intel, in Israeli military and intel, in British intel — tells me that getting good intel is a key to stopping this IED threat.

And speaking for myself, if our guys want to poke somebody in the chest to get the name of a bomb maker so that they can save the lives of Americans, I'm for it. And, Mr. Chairman, if the Department of Defense wants to investigate me for that, and have 15 investigations and call me inhumane, fine. I've been over there, I've talked to these guys. This is the single biggest threat we face in the war on terror, and we have to empower our people to deal with it.

Now, I know it's important that we stick to our own beliefs. That's important in fighting the war on terror. And I'm glad you've had these hearings, Mr. Chairman, because it shows that we care in this country. Boy, at a certain point we have to introduce a note of proportion, and I think that's what Senator Lieberman was saying — I don't want to speak for him. We have the best military in the world. I don't need an investigation to tell me that there was no comprehensive or systematic use of inhumane tactics by the American military, because those guys and gals just wouldn't do it. Everything

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about the culture and the training in the military and at home works against that. That's why the terrorists are attacking us, because we're not the kind of society that would do that.

Thanks for holding this hearing, giving me a chance to say that, Mr. Chairman. I appreciate your service, Admiral.

ADM. CHURCH: Senator, I need to clarify one answer I gave you for the record. You are correct in that the Tier 1, 2 and 3 techniques were all rescinded, and that gave way to the 24 techniques in the — the more restrained of the 35 recommended.

And they were no longer referred — if — there may have been one or two Tier 2 techniques that became one of the 24. I'd have to check. But clearly they moved to more restraint when they issued the second —

SEN. TALENT: Admiral, it's a great country we have, in part because we sweat so much over this stuff. And I don't mean to be out of proportion myself. If you sweat the small stuff, then you can have confidence that you're not doing the big stuff. And maybe that's what Senator McCain was saying. And so I admire us for doing that, but man, I want people to know this is not the sort of thing we do, but we need to do — we need to have effective interrogation techniques to get this intel. This is the whole game — beating these IEDs. And we won't do it just with force protection measures or electronic countermeasures. We're not going to win this from the sky. We're going to win it on the ground, with real intel, and that includes effective interrogation techniques.

Thank you, Mr. Chairman.

SEN. WARNER: Thank you, Senator. Senator, next week this committee will have a briefing on the very serious situation of the IEDs. And part of that will be the discussion of the issues that you have raised.

SEN. TALENT: Mr. Chairman, you and I have talked personally about this, and I want to compliment you on your leadership in this area.

Unfortunately, for the purpose of the public, most of what we do in that area, of course, we have to do in closed session.

SEN. WARNER: Yes.

SEN. TALENT: So the public doesn't necessarily see us in our — and the work that you have led —

SEN. WARNER: But the work is going on here in Congress.

SEN. TALENT: Absolutely, Mr. Chairman.

SEN. WARNER: I thank my colleague.

Senator Reed.

SEN. JACK REED (D-RI): Thank you, Mr. Chairman.

Thank you, Admiral. Admiral, in the course of your investigation, did you speak to or interview — speak with or interview Ambassador Bremer?

ADM. CHURCH: No, sir, I did not.

SEN. REED: Why would you not speak with someone who was the senior Defense Department official who made significant decisions about using Abu Ghraib, presumably was the interface between our military operations, as an employee of the Department of Defense, and our other agencies, like the Central Intelligence Agency?

ADM. CHURCH: It's a several-part answer. The first is, it was the scope of my investigation. But I did pursue —

SEN. REED: Let me follow up, if I may.

ADM. CHURCH: Sir.

SEN. REED: You were specifically told not to interview —

SEN. WARNER: Well, Senator, let him just finish his reply and then I'll give you extra time to develop this —

SEN. REED: Thank you, Mr. Chairman.

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ADM. CHURCH: But sir, no, I was —

SEN. WARNER: — to respond to the senator's question.

ADM. CHURCH: Excuse me, Senator. I was not limited in who I asked questions of. I almost said "interrogated." I generally stayed within DOD because that was — you know, as — Ambassador Bremer, as I understood it, worked for the Department of State —

SEN. REED: Admiral, you're fundamentally wrong.

SEN. WARNER: Wrong.

MR. : Maybe.

ADM. CHURCH: I'm sorry. Which —

SEN. WARNER: Let the record show that this committee was advised that he was taken on by the secretary of Defense. It may have been some technical salary arrangement, but for all intents and purposes, am I not correct —

SEN. REED: You're absolutely correct, Mr. Chairman. He was an appointee of the secretary of Defense, clearly within the chain of command of the civilian authorities and the secretary of Defense.

ADM. CHURCH: The short answer to your question, sir. I apologize for being in error. There was one or two things I was trying to determine in terms of what Ambassador Bremer knew about potential abuses at Abu Ghraib. You're correct that I did not ask him the direct questions, but I talked to his military assistants, I talked to all those who — a number of those who were at the daily meetings, to try to determine if there was any indication — early indication that he had of abuses that he passed to General Sanchez. That was the specific tasking I was looking at at the time. But I did not interview Ambassador Bremer, that's correct.

SEN. REED: Admiral, that seems to be a stunning omission. Here's an individual who was the direct representative of the secretary of Defense, who was, I would assume, nominally the commander of General Sanchez, who had coordination ability, virtually the viceroy of Iraq. And to simply stop with his military assistants to see if they might have gleaned something in a meeting or a conversation seems to be woefully inadequate, with all due respect.

ADM. CHURCH: I accept the criticism, sir. I was trying to — again, the charter was to look at how the interrogation techniques were developed and migrated. I didn't need to interview Ambassador Bremer to determine that. As I expanded the scope of my investigation, some questions arose which I then followed up on, but I didn't specifically have a need, in my mind, to interview him. And frankly, I'm not sure what questions I would ask him if I were interviewing him today.

SEN. REED: How about, "Did you in any way authorize any military officer to violate the law or convention?" "Did you authorize or allow the Central Intelligence Agency" — presumably, the station chief worked for him — "to conduct operations that were contrary to American law?" I mean, I think those are pretty basic questions.

ADM. CHURCH: Well, sir —

SEN. REED: Which goes to how these techniques migrate.

ADM. CHURCH: I think I have a pretty good track on the techniques, what was used and how they migrated, sir.

SEN. REED: Thank you.

Let me turn to Guantanamo now. In the course of your investigation, did you discover techniques that were either authorized or used — and I recognize some were merely authorized but never used — that included basically the environmental deprivations, like hot rooms, cold rooms, withholding of food, hooding for periods of time, removal of clothing, placed in isolation? Were these techniques that were either in an interrogation plan or at times used at Guantanamo in the course of the many months that the facility was operated?

ADM. CHURCH: As I describe in the investigation, there were at least one or two instances where we know that those techniques were employed, where we had clear need for actionable intelligence.

SEN. REED: And by that — I don't want to put words in your mouth. These tools, if you will, were available, all these, perhaps — let me ask that question. Were these range of tools available?

ADM. CHURCH: I'd have to do a side by side, sir, but most of those were not generally available. They were not,

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as I remember, part of the 24 that had been approved by the secretary of Defense. There were a couple of interrogations where specific techniques were authorized beyond those 24.

SEN. REED: And what techniques were used in those interrogations?

ADM. CHURCH: There was sleep management, hooding, stress positions, as I remember, for a few.

SEN. REED: Did you interview General Miller in your investigation?

ADM. CHURCH: Yes, sir.

SEN. REED: On May 19th, I asked General Miller the following question: "It's been reported that you developed a 72-point matrix for stress and duress, lays out types of coercion, escalating levels.

They include harsh heat or cold, withholding food, hooding for days at a time, naked isolation, and cold, dark cells. Is that correct?"

His answer was, "Sir, that is categorically incorrect."

My response: "That never happened?"

"That is categorically incorrect."

How do you rationalize your statement today that, at least in several instances, things like this happened, and that categorical denial?

ADM. CHURCH: I think we're mixing two events. I am not familiar with any matrix.

SEN. REED: Well — go ahead, sir.

ADM. CHURCH: I'm not saying it doesn't exist, but we asked for every piece of paper that existed and made a couple of trips to Guantanamo Bay. I'm not aware of that. But there were two instances where we know that specific interrogation plans were used against those with actionable intelligence.

SEN. REED: Well, if we substitute the word "interrogation plan" for "matrix," how do you reconcile the statements?

ADM. CHURCH: Obviously I don't see the same thing. As a matrix, I understand that to be, Senator, some pre-planned slope of techniques that I've never seen.

SEN. REED: So the real categorical denial was it wasn't a matrix. These techniques were available. You indicate they were used, but it wasn't a matrix. So General Miller categorically denied that it was called a matrix. Is that your interpretation?

ADM. CHURCH: I've never had that specific conversation with him.

SEN. REED: It seems to me a terribly misleading response, based upon your findings, to suggest that none of this ever happened; none of this was ever in any type of document, in any type of plan. And I'll just stop there.

ADM. CHURCH: Senator, I hope —

SEN. REED: Would you like to respond?

ADM. CHURCH: — my investigation clearly lays out everything that happened, both at Guantanamo and the development of techniques. And we know that there was the 2 December memo. We know that was rescinded. We know how we got to the 24 techniques approved by the secretary of Defense. And we know that on a couple of occasions there were exceptions to that that the secretary of Defense approved, and he's openly discussed.

SEN. REED: All of these happened before May 19th, 2004.

ADM. CHURCH: Yes, sir.

SEN. REED: And you had a uniformed officer coming up here and objecting to the term "matrix" by saying, "That's categorically wrong." Of course, we use these things occasionally.

ADM. CHURCH: I'm sorry, Senator. I don't have the context of the question or answer.

SEN. REED: Let me turn now to another issue. You worked closely with the Schlesinger committee. When

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Secretary Schlesinger was here with Secretary Brown, I asked the question, "In October of 2003, Secretary Rumsfeld, at the request of Mr. Tenet, ordered the military chain of command to deny at least the registration rights under the Geneva Convention to an individual who I believe is an Iraqi citizen, an Al An-Salaam (ph). Do you think that is consistent with the application of the Geneva Convention in Iraq, Secretary Brown?"

"The answer to that is no. It is not inconsistent."

Dr. Schlesinger: "If that happened, this is not consistent."

Now, again, there's a factual predicate here. I got my information from the public media, so there might be facts in dispute. But have you looked into the situation, and certainly the military officers that might have transmitted that command down the chain?

ADM. CHURCH: We document that in our investigation in terms of what happened. And I think you're referring to what's generally referred to as Larry or Triple-X. If that's the same individual — and I don't remember the name — we know how that happened. The secretary of Defense has said that shouldn't have happened that way.

SEN. REED: Well, it's nice it shouldn't have happened. But there were military officers that at least arguably were following orders that contravened the Geneva Convention. Did you —

ADM. CHURCH: The secretary of Defense did say that — yes, sir, that's right. He was not assigned an internment security number for many, many months, and that's been acknowledged.

SEN. REED: As a violation of the Geneva Convention?

ADM. CHURCH: Yes, sir.

SEN. REED: Well, what about those officers that carried out that order, Admiral? They were not privates and corporals and sergeants. They started with generals and colonels, all the way down.

ADM. CHURCH: The individual you're talking to — I think the quote that I've seen — "kind of fell through the cracks." In the chaos of the ongoing war, they accepted the individual, didn't assign an internment security number, and since we forgot about him for many number of months until people started trying to find out where he was, and they found him.

SEN. REED: And who's being held responsible for allowing that to happen?

ADM. CHURCH: I can't answer your question. We know it happened and we know why it happened. It was an unfortunate incident, but it happened.

SEN. WARNER: But your charter by the secretary of Defense did not require you to reach a conclusion. That's my understanding.

ADM. CHURCH: This whole discussion is well beyond the charter of my investigation. I tried to —

SEN. WARNER: This whole what?

ADM. CHURCH: This whole discussion is really beyond the charter. I tried to capture as much as I could. We know that this particular individual fell through the cracks, as I said earlier.

SEN. WARNER: Senator, resume, please.

SEN. REED: Thank you, Mr. Chairman. Just a point. Someone who has been singled out for specialized treatment by the secretary of Defense and the Central Intelligence Agency director, I find it hard to believe he just falls through the cracks. I find it hard to believe that it was just an administrative goof. And I think frankly that part of your responsibilities were to look closely at the military chain of command, certainly, as to how they responded to these orders, some of which arguably are contrary to the convention.

Admiral, this to me is a very disappointing report. The limitations both imposed on you from without and self-imposed, apparently, particularly with respect to Mr. Bremer, lead to conclusions — and, again, this report is not simply laying out the facts. You've drawn some conclusions. And it seems to me the conclusion is this is all just one big misunderstanding, this policy here; falling through the cracks, et cetera — which I don't think is an adequate response to the problems we've seen.

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And I think the chairman asked a very fundamental question. What contributes to breakdown of good order and discipline? And I would argue, at least in part, it's when people in authority, not just E-5s and E-6s, find ways to excuse violations of the law. And that is a very toxic ingredient.

There is an ancient Roman that posed the question, "Who will guard the guardians?" It's a question we face today. Who will look after those that we've entrusted with our national security and defense and make sure that they follow laws? And I think the jury is still out.

ADM. CHURCH: Senator Warner, can I make a comment?

SEN. WARNER: Yes, of course. You have adequate time to respond to the senator's last observation and any others you wish.

ADM. CHURCH: Thank you, sir. I'd like to challenge the premise that this was all one big misunderstanding. We spent nine months, as I said initially, over 800 interviews, reviewed thousands and thousands of pages of documents, leveraged all the other reports.

I very seriously took my charge as an IG, and I understand I was picked because I was an IG, because they wanted an independent look at exactly what happened, how it happened, why it happened. And I think I've laid that out with some precision.

I'm just reacting to the characterization of the report, which I'm proud of the work the folks did, as a misunderstanding. Clearly some things were done wrong. Clearly some things in hindsight, Senator, would be done differently. And I think I've captured those. I've laid out all the abuse cases. And had the chips fallen differently, I would have made that call. They didn't.

And I was as factual — and I think that's why you ask an IG to do something like this is because you get — every IG I've known takes that position of independence very seriously. And I took it where it led. And the facts are the facts. And I understand that some people won't like the facts or, in some cases, the conclusions. But it's not all one big misunderstanding, sir.

SEN. REED: Well, Admiral, I respectfully disagree. And I think failing to pursue all the facts, failing to at least talk to Ambassador Bremer, failing to follow up on certain things that seem to emerge from our discussion, suggests that this is not the thorough, complete, no-holds-barred report that many of us expected.

Thank you.

SEN. WARNER: I would simply say, Senator, that I sort of share your views with regard to the integral role that Ambassador Bremer had in the overall decision-making in this time period that he had the designation really given by the president at the recommendation of the secretary of Defense is my understanding.

However, I'd like to — and I think, Admiral, look — a tough old bird. You had a difficult job. You did the best you could professionally, drawing on years of experience. And there's obviously going to be, I think, respectful differences of view. But I'm glad you've stated for the record and reaffirmed the work that you and your many subordinates — how large was your team?

ADM. CHURCH: We started with 50 when we went into theater and started doing our actual investigatory work and asking questions for the record, taking sworn statements. Very shortly after that we were down to a dozen or so. And I think there's two of us standing today, Senator.

SEN. WARNER: I want to call your attention to the headlines, and I select the Washington Post. It reads, "Abuse Review Exonerates Policy." I think probably that you would reflect that headline as being reasonably accurate. Wouldn't that — in other words, you said the policy —

ADM. CHURCH: The policy did not contribute to the abuse.

SEN. WARNER: — was not the root cause of these egregious breaches and criminal acts. But the next line sort of could, in the minds of individuals, cause confusion. And it reads, "Low-Level Leaders and Confusion Blamed." That implies that the upper level received some type of exoneration. It could be inferred by some. And I want to clarify that.

In your series of interviews, I presume you interviewed General Karpinski, General Fast, General Sanchez. Would that be correct?

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ADM. CHURCH: We did not specifically interview General Karpinski, but the other two we did.

SEN. WARNER: You did. Was there reason for Karpinski, because of her legal situation at this time --

ADM. CHURCH: No, sir. We -- again, I leveraged a lot of the other reports. Because General Taguba, Fay, Kern, Jones had all looked so thoroughly at that --

SEN. WARNER: Right.

ADM. CHURCH: -- I didn't reinvestigate Abu Ghraib. So I felt no need to interview her. But I did have some questions for General Sanchez and some others, but I did not interview her.

SEN. WARNER: Well, the Department of the Army, under the immediate direction of the secretary, and subject to review by the secretary of Defense, are looking at the issues of accountability and participation by those three officers. And it was never your charter, clearly, to establish accountability.

So I wish to make clear for the record, you were not interviewing for purposes, I presume, of accountability. But as I, in my initial question, stated, what was the root cause of so many instances where regulations were completely ignored, good-standing regulations and procedures, which allowed these acts to take place? In your interviews with, say, General Fast and General Sanchez, could you comment on what you learned from each of them?

ADM. CHURCH: Both General Fast and General Sanchez, in my opinion --

SEN. WARNER: Don't mix them. Just take one at a time.

ADM. CHURCH: Well, General Sanchez -- I had specific questions primarily for General Sanchez as to how he develop the techniques that he promulgated in September and then repromulgated in October. So that was the line of questioning. And I needed to understand from him what was given to him. Did it have a legal review? "Why did you not just rely on Geneva or the doctrine? Why did you promulgate separate interrogation techniques in September?" And so the line of questioning was, "How did we develop and promulgate, and why did you do that?"

I was also trying to follow up on what he knew about the events at Abu Ghraib that maybe hadn't already been covered. I didn't uncover anything new that hadn't really -- we didn't already know. And General Fast --

SEN. WARNER: Let me just summarize. Then with General Sanchez, you determined from your interview that the information he provided you was consistent with the same information he'd given others, and which information had been published in any of the other nine series of reports. Is that correct?

ADM. CHURCH: It was. I gleaned a couple of other things regarding pressure on interrogators, but that's a correct statement, Senator. Yes, sir.

SEN. WARNER: Did you confirm that General Sanchez was very short-handed with staff? He was given an enormous responsibility; very short-handed with staff, was managing a very hot-war situation at the same time he was trying to do a lot of administrative things of this nature. Is that correct?

ADM. CHURCH: Consistent with the other investigations, I confirmed that, yes, sir.

SEN. WARNER: Thank you. Now we turn to General Fast.

ADM. CHURCH: I questioned General Fast on --

SEN. WARNER: You might describe for the record what her area of responsibility was. I know, but --

ADM. CHURCH: She was, I guess, the C-2 or the -- head of the intelligence function at CJTF-7 --

SEN. WARNER: Which is General Sanchez's command.

ADM. CHURCH: -- and worked directly for General Sanchez. And she was brought in specifically to put into place the intelligence architecture. My purpose in talking to her was that what she knew about the interrogation policies and what she knew about any instances of abuse and when she knew them, and I was able to document all that. And she really was not particularly engaged in the interrogation techniques. It turns out that was mostly the judge advocate generals who put that together.

But since you've mentioned those two, I will say that of all the people I interviewed in the course of this investigation,

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those two individuals were the most responsive and forthcoming of anybody. And both of them at the time were in the process of permanent change-of-station orders. And I would get 24-hour turnaround on the question that I needed answered. So that wasn't your specific question, but I took the opportunity, Senator, to make that point.

SEN. WARNER: No, but I think that's an important observation. Now, there's considerable question in the minds of many as to the culpability or non-culpability of seniors in this chain of command. You go up from Colonel Pappas, I presume. Did you have an opportunity to talk with him?

ADM. CHURCH: No, sir. I relied on previous investigations.

SEN. WARNER: Previous investigations. Well, let's talk about the chain of command, as you went up the chain of command, whom you interviewed. Obviously Karpinski, you've answered that; Fast, not direct chain of command, staff, nevertheless reporting to Sanchez. You've covered Sanchez. Did you talk to General Abizaid?

ADM. CHURCH: I did, sir.

SEN. WARNER: And what can you share with regard to his responses?

ADM. CHURCH: General Abizaid — actually, I debriefed him on the way out. And primarily what I did with the Central Command is I reviewed all the documentation that they had, relevant to the development of interrogation policies. I did not interview him specifically because I had all my questions answered.

SEN. WARNER: Any other senior-level individuals did you interview?

ADM. CHURCH: Yes, sir, throughout the Pentagon, all the way up to the deputy secretary of Defense and the vice chairman and chief of staff.

SEN. WARNER: Well, I think let's go through very thoroughly, now. You went through the chain of command right up to the Department of Defense.

ADM. CHURCH: Yes, sir.

SEN. WARNER: And you interviewed right up through Secretary Wolfowitz. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. WARNER: And the general counsel?

ADM. CHURCH: The general counsel. I interviewed general counsel.

SEN. WARNER: Secretary Cambone?

ADM. CHURCH: I did, sir.

SEN. WARNER: All right. So, really, you did cover with, in my judgment, thoroughness the entire chain as it related to your charter.

ADM. CHURCH: That was my attempt, yes, sir.

SEN. WARNER: And I've already indicated that there are ongoing assessments of the culpability of several of these individuals whom we've mentioned, and you're aware of that.

ADM. CHURCH: I'm aware of that, yes, sir.

SEN. WARNER: So any inference that just low-level officers and leaders were blamed could be misconstrued, because the seniors are still being examined.

ADM. CHURCH: I've seen the list and that's correct, sir.

SEN. WARNER: I just want to make that eminently clear. And this committee will continue to discharge its responsibility in this matter as further reports are made available to us, and we'll perhaps do some of our own independent work in this area. But your report constitutes a very valuable part of this committee's record.

On the question of ghost detainees, you found that there were violations of the Geneva Convention regarding failures to account for some detainees called ghost detainees and to make their presence in Abu Ghraib known to the ICRC, International Red Cross.

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What were your findings with respect to this issue? Did you find the type of violation at other detention facilities?

ADM. CHURCH: Senator, we did not find that anywhere else. If I didn't say it earlier, I should have. The CIA cooperated with our investigation and, in fact, reviewed that section of the report. Between what we had and what they had, we determined that there were about 30, quote, "ghost detainees," although that's not a term of doctrine, that existed. I think the maximum was for a period of 45 days. That has long since been discontinued, but we did document that we think about 30 ghost detainees did occur.

SEN. WARNER: Our vote has not started as yet. Let's turn to the professional military intelligence in the Department of the Army. You conclude in your report that only 20 of the substantiated cases of abuse were interrogation-related and that only a few of these incidents actually involved military interrogators.

Were the methods and techniques used by these interrogators derived from any policy issued by the local command? And in the absence of that policy or the circumstances of the changing policy, what guided the actions of these interrogators? And did you feel that the professional military interrogators were well-trained individuals?

ADM. CHURCH: You're correct, sir. Using the expansive definition of interrogation-related, we found about 20 instances of the seventy abuse cases. Again, the way we classified that, that was even MPs or any member at the point of capture.

None of these directly related to any of the authorized interrogation techniques. And although interrogators were in short supply, as we've known and documented, I found the professional training to be quite good, those that we had.

SEN. WARNER: And therefore, you feel that the intelligence segment of the Department of the Army had in the field well-trained individuals.

ADM. CHURCH: Yes, sir, not in sufficient numbers, but well-trained.

SEN. WARNER: Thank you very much. Senator Levin.

SEN. LEVIN: Thank you, Mr. Chairman. There's been reference to a very critical memo here that you were able to look at but not take a copy of, and that's that March 14th memo prepared by Deputy Assistant General Mr. Hu (ph) for Mr. Haynes.

Mr. Chairman, we have a right to that memo. I think the admiral had a right to have a copy of that memo, but that's up to him to decide. But this committee has a right to that memo. And I would ask that we, on an urgent basis, get that memo. It's been referred to numerous times. It was a key part of this whole interrogation decision. It was a memo which was the controlling memo, despite the concerns of the lawyers inside of the military.

And I would ask you, Mr. Chairman, that we make a formal request for a copy of that memo. Obviously if they want to give it to us on a classified basis, that's one thing. But not to have a copy of that memo is totally unacceptable. And I'm afraid it's too typical of a very great reluctance on the department's part to be fully supportive with documentation which has been requested on other occasions by us.

But anyway, my specific request, Mr. Chairman --

SEN. WARNER: As you know from our --

SEN. LEVIN: -- for that March 14th, 2003 memo.

SEN. WARNER: In our long working relationship of 27 years on this committee, I feel that the Congress is a co-equal branch, and as such, unless there's executive privilege attached to certain documents, the Congress should have them. And I will look into this.

SEN. LEVIN: I thank you.

SEN. WARNER: Thank you.

SEN. LEVIN: I thank you for that. Now, Admiral, you indicated that, as I understand it, that you were not tasked to assess personal responsibility at senior levels. Is that correct?

ADM. CHURCH: That's correct, sir.

SEN. LEVIN: In your report you say that issues of senior official accountability were addressed by the Schlesinger

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panel. But the Schlesinger panel did not address the issue. As a matter of fact, they were specifically tasked not to.

In their tasking from the secretary of Defense on May 12th, 2004, they were told that issues of personal accountability will be resolved through established military justice and administrative procedures. So they were not tasked. In fact, they were quite clearly told, "Stay away from it." And then this one qualifier was added, "Although any information you may develop will be welcome."

So what did you mean when you said the Schlesinger panel was tasked to assess personal accountability at senior levels; that was not your job?

ADM. CHURCH: Thank you for the opportunity to explain. The Schlesinger panel charter was pretty open-ended. The secretary of Defense verbally told them, "You look at anything you need to look at it." And you're correct, it may not be in writing.

We worked very closely with that panel. As I mentioned earlier, I think we provided all the data that you see in their report. I reviewed their drafts. We exchanged information. Early on, in working together with that panel, I made the observation that I was not tasked to look at responsibility, individual or high-level responsibility. And it evolved, and an agreement was made that they would do that.

And that kept me within my charter to look at interrogation and development of interrogation techniques. There was nothing formal about that, but there was an understanding that they would do that. And as I looked at their report, I thought they had. There's a difference between responsibility and accountability, as you well know, Senator. I thought they assessed responsibility fairly clear.

SEN. LEVIN: I think about the only thing they said that we can find, that the abuses were not just a failure of some individuals to follow known standards; they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels. Did they identify anybody at higher levels who bears personal responsibility?

ADM. CHURCH: Well, they did, sir. There's about five instances in the report that I've pulled out. One comment; Lieutenant General Sanchez and his deputy failed to ensure proper staff oversight of detention interrogation operations. The quote that you just had, interrogation policies with respect to Iraq, where the majority of the abuses occurred, were inadequate or deficient in some respects at three levels — DOD, CENTCOM, JTF-7 and the prison itself.

SEN. WARNER: Could you give us a citation of the material that you were reading?

SEN. LEVIN: I quoted that before.

ADM. CHURCH: I'm sorry —

SEN. LEVIN: We do have that citation. Did you identify any personal responsibility?

ADM. CHURCH: Well —

SEN. LEVIN: Did they say who it was up in the chain of command that was the cause of the confusion? What was the reason why there were inconsistent rules relative to interrogation, who it was that blocked the lawyers who had objections to the rules that were proposed by the Office of Criminal Justice? Did they do any assessment of responsibility, name any names up that chain of command above Sanchez?

ADM. CHURCH: Well, beyond what I've told you, no, sir.

SEN. LEVIN: Okay. There was a reference here to the definition of humane treatment that was supposed to be followed at Guantanamo. Did you agree with General Miller's definition of humane treatment?

ADM. CHURCH: I don't remember specifically what that was, so I won't give you a specific answer, sir. He may have said something I'm not aware of.

SEN. LEVIN: So you don't remember having a reaction to his definition of humane treatment as to whether it was too narrow?

ADM. CHURCH: No, sir, I don't. Sorry.

SEN. LEVIN: Okay. And one of the tactics which was referred to in the e-mail, the FBI e-mail, was — I'm quoting

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here — "The DOD interrogators impersonated special agents of the FBI when talking to detainees," that this tactic produced no intelligence, they said, of a threat, that it may have destroyed any chances of prosecuting the detainee.

But my point here is the tactic itself of impersonating, DOD personnel and interrogators impersonating FBI agents. Did you check on that and see what the basis of that tactic was, the origin of the tactic?

ADM. CHURCH: There is a tactic, impersonating personnel from third countries, for example. That's part of the basic concept of interrogation, which is to try to get the information. You could almost make the case that falls within doctrine.

SEN. LEVIN: It says here that — well, the FBI objected to that. Is that correct?

ADM. CHURCH: Yes, sir, as I remember.

SEN. LEVIN: And did you talk to the FBI about why they objected to it?

ADM. CHURCH: We had the FBI memo. I hope I mentioned, we looked very carefully at that. We know a couple of instances they're talking about. In the early development of the techniques, a lot of things were being considered. That eventually led to the October memo that SOUTHCOM forwarded up. But we're aware of that, sir.

SEN. LEVIN: Did you talk to the FBI people as to why they objected, though?

ADM. CHURCH: Not specifically, no, sir.

SEN. LEVIN: It's hard for me to believe that it's doctrine, it's DOD doctrine, that they impersonate FBI agents. You're saying it is doctrine that they do that?

ADM. CHURCH: No, sir, I'm not saying that. I'm saying that doctrine in itself and interrogation in itself is deceptive in that you are trying to get information from a witness who doesn't want to give you that information.

It calls to point the basic elasticity of doctrine. One of the doctrine techniques is — (inaudible) — up harsh. And as many have said before me, much of the expanded interrogation techniques could easily have fit within that definition of doctrine, which is why I make the case in the report is that we need to clearly get new doctrine out there that all of our interrogators understand. That's the imperative piece — doctrine that will allow us to get the actionable intelligence that we need.

SEN. LEVIN: Staying within the rules of law?

ADM. CHURCH: Absolutely, sir.

SEN. LEVIN: It's that elasticity which I'm afraid was stretched beyond the rule of law here and which has gotten us and our troops — us in a lot of trouble as a nation and our troops in the future in some real threatening situations. That is really what the issue is here.

And I guess my last question is — and I don't know whether you perhaps have answered this question or not — but the reference in the FBI document to the torture techniques that they witnessed, I just specifically want to ask you, did you talk to the writers of that memo about what they witnessed and described as torture techniques by DOD personnel?

ADM. CHURCH: No, sir.

SEN. LEVIN: Why not?

ADM. CHURCH: Well, I got the information — we actually even had a member of our team who was part of the criminal investigative task force working with the FBI down there. So we knew about this. We had the information. And when we saw the memo, we quickly reacted to see if, in fact, we had covered everything that was in that memo. And there was, as I mentioned, I hope, one incident that we didn't think had been followed up.

And I'd like to add, as you already know, SOUTHCOM is following up on the allegations. And the current naval inspector general has already reviewed, I believe, 16,000 documents to try to trace this back to make sure we don't have any gaps in that information, Senator.

ADM. CHURCH: There's a named person whose name is redacted for us. And it seems to me a thorough investigation would talk to the writer of those memos. That's just part of thoroughness to me. You can say you think you covered it in other ways, and maybe you did. But you don't know until you talk to the people who wrote the memos, who saw what

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they described as torture techniques. So I think it's just not — it's not satisfactory to simply leave it at that. I can't.

Thank you very much.

SEN. WARNER: Thank you, Senator Levin. We've got to immediately get to the vote. They're holding it for us. I want the record to reflect that the charter given by the secretary of Defense to the Schlesinger commission — and, by the way, I, in my modest career, have never met a finer man than Jim Schlesinger. I was privileged to serve under him as secretary of the Navy during the Vietnam War era, and I have a similar respect for his partner, the undersecretary of Defense. And we will be in consultation with them.

But I read from the charter given by Rumsfeld, "Issues of personal accountability will be resolved through established military justice and administrative procedures, although any information you" — that is, Schlesinger and Harold Brown and others — "may develop will be welcomed."

And I find on page 47 of the Schlesinger Report some fairly specific findings pursuant to that charter. For example, the CJTF-7 deputy commander failed to initiate action to request additional military police for detention operations after it became clear there were insufficient assets in Iraq. And there's several others cited here. I'll put them in the record in their entirety.

Now, this committee will continue to work with the secretary of Defense, who has been extremely cooperative throughout our work here in the committee. He was the first witness. He stood up and said in his capacity as the ultimate authority he takes his share of the accountability. I commended him for that and still do. And I know a number of ongoing things initiated by the secretary and others under the administrative and judicial procedures.

So there's much work yet to be done. But I think it's to the credit of this great nation that there have been 10 reports on this very distressing chapter in our military history — otherwise a military history that is envied by the whole world. And as I mentioned in my opening statement, over a million men and women in uniform have rotated in and out of the AOR of Iraq — and then more in Afghanistan. And when you look at the small fraction of those who have been adjudged guilty and are still in the process, it shows that these fine persons in uniform — and others — went there and discharged those difficult and dangerous missions with great integrity and in accordance with the rule of law as best they could understand it.

I thank you, Admiral. We'll have — resume this hearing in closed session in 222 Russell as soon as three consecutive votes are finished.

SEN. LEVIN: Okay.

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In other Belgian News...

Prepared by the Embassy Press Section

Thursday, March 19, 2009

I. The EU Corner

EU-Secret Prisons -- European Parliament to decide on inquiry into alleged CIA secret prisons, flights

BRUSSELS, Belgium -- The European Parliament will decide next week whether to launch its own formal inquiry into alleged CIA secret prisons and flights on European territory, officials said Friday.

Three parliamentary groups _ the Socialists, Liberal Democrats and Greens _ are pushing for the establishment of a committee of inquiry, despite the EU governments' satisfaction with comments by U.S. Secretary of State Condoleezza Rice explaining Washington's views on secret prisons and the treatment of terrorist suspects.

The parliamentary investigation would complement and add political weight to a probe that is already being carried out by the Council of Europe, a human rights watchdog.

"A whole series of EU states must have been informed (of the CIA flights)," said Martin Schulz, chairman of the Socialist group in the EU assembly, adding that the inquiry committee should demands clear and unambiguous answers from EU member states.

"We must ask: are people transported on these flights? Are they EU citizens? Are extralegal arrests carried out on European territory? Was there active or passive contribution of EU members states to these flights?" Schulz told journalists.

The parliament's civil liberties committee will discuss the issue on Monday in Strasbourg, France, in the presence of EU Justice and Home Affairs Commissioner Franco Frattini and members of the Council of Europe.

Swiss lawmaker Dick Marty is investigating on behalf of the Council of Europe the CIA's reported transfers of prisoners through European airports to secret detention centers. Poland and Romania have been identified by the New York-based Human Rights watch as sites of possible CIA secret prisons, but both countries have repeatedly denied any involvement.

During her five-day trip to Europe, which ended Friday, Rice refused to answer directly whether the United States keeps terrorist suspects in detention centers that violate European legal and human rights guarantees. But she asserted that the U.S. acts within the law, and argued that the Europeans were safer because of tough U.S. tactics.

Rice told NATO and EU foreign ministers in Brussels on Wednesday that the United States did not violate the rights of terrorist suspects. European officials expressed satisfaction with her explanation, seeking to shift away from a confrontation with Washington over the issue.

But the EU parliament and the Council of Europe refused to be placated by Rice's remarks, and promised not to let the issue go until all questions regarding the hundreds of reported CIA flights over Europe and reports of detention centers were answered.

II. In Other News...

Serbia-War Crimes -- EU,U.S. losing patience with Serbia over war crimes fugitives, FM says

BELGRADE, Serbia-Montenegro -- The United States and the European Union are losing patience with Serbia over its failure to arrest top U.N. war crimes suspects, foreign minister said in comments published Friday.

Vuk Draskovic told the Beta news agency that Gen. Ratko Mladic and Radovan Karadzic are still at large because their capture depends on Serbia's "unreformed security services" which remain under the control of former President Slobodan Milosevic's allies.

Draskovic, an opposition leader under the former regime, has claimed that Milosevic's allies still control Serbia's police despite his ouster from power in 2000, and his extradition to the U.N. war crimes tribunal in 2001.

The arrest in Spain of top Croatian war crimes suspect Ante Gotovina put the spotlight on Serbia to come up with the two other top fugitives from the Balkan wars. Mladic and Karadzic are believed to be hiding in Serbia or in the Serb-controlled half of Bosnia.

The U.S. and the EU "are still supporting Serbia's European future, but are losing patience because of our failure to carry out our obligations" toward the U.N. tribunal in The Hague, Netherlands, Draskovic said.

Wartime Bosnian Serb leader Karadzic and army commander Mladic were charged by the tribunal with orchestrating the 1995 massacre of 8,000 Muslim boys and men from Srebrenica _ Europe's worst carnage since World War II.

Norway-ElBaradei-Iran -- Nobel peace laureate ElBaradei says world patience running out over Iran nuclear program

OSLO, Norway -- The international community is losing patience with Iran over its nuclear program, Nobel Peace Prize laureate Mohamed ElBaradei said Friday.

"They are inching forward and I'm asking them to leap forward," said ElBaradei, who shares the coveted award with the International Atomic Energy Agency he leads.

He said he hopes outstanding nuclear issues with the country will be clarified by the time he presents his next report on Iran in March, because "the international community is losing patience with the nature of that program."

"The ball is in Iran's court. It is up to Iran to show the kind of transparency they need to show," ElBaradei told reporters in Oslo.

He encouraged European negotiators to continue talks with Iran.

"The parties need to sit together, discuss their grievances and reach a solution," he said. "If we can do that without escalating the problem, all the much better."

No date has been set to resume the talks with Britain, France and Germany, which broke off in August after Tehran restarted uranium conversion, a precursor to enrichment.

The IAEA and much of the world community have been pushing Iran's religious leaders to allow closer inspection of the nuclear program that Tehran claims is intended only for energy.

EI Baradei is to receive the Nobel Prize at an award ceremony on Saturday.



Dow Jones & Reuters

US-PRISONERS.

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CIA using third degree on Al Qaeda, Taliban prisoners: report

Washington, Dec 26 (PTI) US intelligence is using third degree methods to elicit information from Al Qaeda and Taliban prisoners in its overseas detention centres, and if these techniques did not work, were shipping them to countries where **torture** is common, a media report said Thursday.

The Central Intelligence Agency (CIA) is using "stress and duress" system to break its prisoners in detention centres at **Bagram** Air Base in Afghanistan, Diego Garcia Islands in the Indian Ocean and other secret detention centres, it said.

Prisoners in **Bagram** are held in metal shipping containers and kept standing or kneeling for hours in black hoods or spray-painted goggles, intelligence specialists familiar with CIA interrogation methods were quoted as saying.

At times, the detainees are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights, part of the "stress and duress techniques", they said.

While specially trained CIA officials personally supervised the interrogation of Al Qaeda and Taliban leaders, lower level captives were handed over to foreign intelligence agencies - notably those of Jordan, Morocco, Egypt and Saudi Arabia, with a list of questions the agency wanted answered.

These "extraordinary renditions" are done without resorting to legal procedures and usually involve countries with security services known for using brutal methods, the 'Washington Post' reported.

According to US officials, nearly 3,000 suspected Al Qaeda members and supporters have been detained worldwide since September 11, 2001. About 625 are at the US military's confinement facility at Guantanamo Bay, Cuba.

Some officials estimated that fewer than 100 captives have been "rendered" to other countries.

While the Guantanamo Bay is open to visits by military

lawyers, reporters and the Red Cross, the **Bagram** detention centre is strictly off-limits for officials of even other US agencies, the 'Post' reported.

The US government publicly denounces the use of **torture** but each of the national security officials interviewed for the 'Post's' article defended the use of violence against captives as "just and necessary". They expressed confidence that the American public would back their view.

"If you don't violate someone's human rights some of the time, you probably are not doing your job," said one official who has supervised the capture and transfer of accused terrorists. "I don't think we want to be promoting a view of zero tolerance on this." The CIA refused to comment.

The method of arrest of the suspects was also violent,

the daily said.

Abu Zubaida, who is believed to be the most important Al

Qaeda member in detention, was shot in the groin during his capture in Pakistan in March. National security officials said he is now cooperating and his information has led to the apprehension of other Al Qaeda members.

US officials said many of the successes in obtaining information from terrorists were a result of information gained during interrogations.

The capture of Al Qaeda leaders Ramzi Binalshibh in Pakistan, Omar al Faruq in Indonesia, Abd al-Rahim al-Nashiri in Kuwait and Muhammad al Darbi in Yemen were all partly the result of information gained during interrogation, they said. All four are now in CIA custody.

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