

## **‘Ugly’ Questions for Gen. Myers**

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Tuesday evening offered an unusual opportunity to question the former chairman of the Joint Chiefs of Staff (2001-2005), Air Force Gen. Richard Myers, at an alumni club dinner. He was eager to talk about his just-published memoir, *Eyes on the Horizon* (and I was able to scan through a copy during the cocktail hour).

Myers's presentation, like his book, was thin gruel. After his brief talk, he seemed intent on filibustering during a meandering Q & A session. He finally called on me since no other hands were up. Some were yawning, but it was too early to simply leave.

I introduced myself as a former Army intelligence officer and CIA analyst with combined service of almost 30 years. I thanked him for his stated opposition to interrogation techniques that go beyond "our interrogation manual"; and his conviction that "the Geneva Conventions were a fundamental part of our military culture"-both viewpoints emphasized in his book.

I then noted that the recently published Senate Armed Services Committee report, "Inquiry Into the Treatment of Detainees in U.S. Custody," sowed some doubt regarding the strength of his convictions.

Why, I asked, did Gen. Myers choose to go along in Dec. 2002 when then-Defense Secretary Donald Rumsfeld authorized harsh interrogation techniques and, earlier, in Feb. 2002, when President George W. Bush himself issued an executive order arbitrarily denying Geneva protections to al-Qaeda and Taliban detainees?

I referred Gen. Myers to the Senate committee's finding that he had nipped in the bud an in-depth legal review of interrogation techniques, when all interested parties were eager for an authoritative ruling on their lawfulness. (The following account borrows heavily from the Senate committee report.)

Background: The summer of 2002 brought to interrogators at Guantanamo fresh guidance, plus new techniques adopted from the Korean War practices of Chinese Communist interrogators who had extracted false confessions from captured American troops.

On Aug. 1, 2002 a memo signed by the head of the Justice Department's Office of Legal Counsel, Jay Bybee, stated that for an act to qualify as "torture":

- "Physical pain ... must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

- "Purely mental pain or suffering ... must result in significant psychological harm of significant duration, e.g., lasting for months or even years."

During the week of Sept. 16, 2002, a group of interrogators from Guantanamo flew to Fort Bragg, North Carolina, for training in the use of these SERE (Survival, Evasion, Resistance, & Escape) techniques, which were originally designed to help downed pilots withstand the regimen of torture employed by China. Now, SERE techniques were being “reverse engineered” and placed in the toolkit of U.S. military and CIA interrogators.

As soon as the Guantanamo interrogators returned from Fort Bragg, senior administration lawyers, including William “Jim” Haynes II (Department of Defense), John Rizzo (CIA), and David Addington (counsel to Vice President Dick Cheney), visited Guantanamo for consultations.

And, just to make quite sure there was no doubt about the new license given to interrogators, Jonathan Fredman, chief counsel to CIA’s Counterterrorist Center, also arrived and gathered the Guantanamo staff together on Oct. 2, 2002, to resolve any lingering questions regarding unfamiliar aggressive interrogation techniques, like waterboarding.

Fredman stressed, “The language of the statutes is written vaguely.” He repeated Bybee’s Aug. 1 guidance and summed up the legalities in this way: “It is basically subject to perception. If the detainee dies, you’re doing it wrong.”

#### Needed: More Authoritative Guidance

Small wonder that on Oct. 11, 2002, Gen. Michael Dunlavey, the commander at Guantanamo, saw fit to double check with his superior, SOUTHCOM commander Gen. James Hill and request formal authorization to use aggressive interrogation techniques, including waterboarding.

On Oct. 25, 2002, Hill forwarded the request to Gen. Myers and Secretary Rumsfeld, commenting that, while lawyers were saying the techniques could be used, “I want a legal review of it, and I want you to tell me that, policy-wise, it’s the right way to do business.” Hill later told the Army Inspector General that he (Hill) thought the request “was important enough that there ought to be a high-level look at it ... ought to be a major policy discussion of this and everybody ought to be involved.”

Gen. Myers, in turn, solicited the views of the military services on the Dunlavey/Hill request.

The Army, Navy, Marines and Air Force all expressed serious concerns about the legality of the techniques and called for a comprehensive legal review. The Marine Corps, for example, wrote, “Several of the techniques arguably violate federal law, and would expose our service members to possible prosecution.”

#### Ends Justify Means?

The Defense Department’s Criminal Investigative Task Force (CITF) at Guantanamo joined the services in expressing grave misgivings. Reflecting the tenor of the four services’ concerns, CITF’s chief legal advisor wrote that the “legality of applying certain techniques” for which authorization was requested was “questionable.” He added that he could not “advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.”

Myers's Legal Counsel, Captain (now Rear Admiral) Jane Dalton, had her own concerns (and has testified that she made Gen. Myers aware of them), together with those expressed in writing by the Army, Navy, Marines and Air Force. Dalton directed her staff to initiate a thorough legal and policy review of the proposed techniques.

The review got off to a quick start. As a first step, Dalton ordered a secure video teleconference including Guantanamo, SOUTHCOM, the Defense Intelligence Agency, and the Army's intelligence school at Fort Huachuca. Dalton said she wanted to find out more information about the techniques in question and to begin discussing the legal issues to see if her office could do its own independent legal analysis.

#### See No Evil

Under oath before the Senate Armed Services Committee, Captain Dalton testified that, after she and her staff had begun their analysis, Gen. Myers directed her in November 2002 to stop the review.

She explained that Myers returned from a meeting and "advised me that [Pentagon General Counsel] Mr. Haynes wanted me ... to cancel the video teleconference and to stop the review" because of concerns that "people were going to see" the Guantanamo request and the military services' analysis of it. Haynes "wanted to keep it much more close-hold," Dalton said.

Dalton ordered her staff to stop the legal analysis. She testified that this was the only time that she had ever been asked to stop analyzing a request that came to her for review.

#### Asking Myers

I asked Gen. Myers why he stopped the in-depth legal review. He bobbed and weaved, contending first that some of the Senate report was wrong.

"But you did stop the review, that is a matter of record. Why?" I asked again.

"I stopped the broad review," Myers replied, "but I asked Dalton to do her personal review and keep me advised."

(Myers had a memory lapse when Senate committee members asked him about stopping the review.)

I asked again why he stopped the review, but was shouted down by an audience not used to having plain folks ask direct questions of very senior officials, past or present.

#### I Confess: Rumsfeld Made Me Do It

Haynes told the Senate committee that "there was a sense by DoD leadership that this decision was taking too long."

On Nov. 27, 2002, shortly after Haynes told Myers to order Dalton to stop her review – and despite the serious legal concerns of the military services – Haynes sent Rumsfeld a one-page memo recommending that he approve all but three of the 18 techniques in the request from Guantanamo. Techniques like stress positions, nudity, exploitation of phobias (like fear of dogs), deprivation of light and auditory stimuli were all recommended for approval.

On Dec. 2, 2002, Rumsfeld signed Haynes's recommendation, adding a handwritten note referring to the use of stress positions: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

As the shouting by my distinguished colleagues died down, I too remained standing, reminding myself that I had wanted to say a word about the Geneva Conventions, "for which you, Gen. Myers, express such strong support in your book."

I waved a copy of the smoking-gun, two-page executive memorandum signed by George W. Bush on Feb. 7, 2002. That's the one in which the President arbitrarily declared that Common Article 3 of the Geneva Conventions did not apply to al-Qaeda and Taliban detainees, and then threw in obfuscatory language from lawyers Addington and Alberto Gonzales that such detainees would nonetheless be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

I then made reference to "Conclusion 1" of the Senate committee report:

"On Feb. 7, 2002, President George W. Bush made a written determination that Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, did not apply to al-Qaeda or Taliban detainees.

"Following the President's determination, techniques such as waterboarding, nudity, and stress positions ... were authorized for use in interrogations of detainees in U.S. custody."

"Gen. Myers," I asked, "you were one of eight addressees for the President's directive of Feb. 7, 2002. What did you do when you learned of the President's decision to ignore Geneva?"

"Please just read my book," Myers said. I told him I already had, and proceeded to read aloud a couple of sentences from my copy:

"You write that you told Douglas Feith, 'I feel very strongly about this. And if Rumsfeld doesn't defend the Geneva Conventions, I'll contradict him in front of the President.'

"You go on to explain very clearly, 'I was legally obligated to provide the President my best military advice - not the best advice as approved by the Secretary of Defense.'

"So, again, what did you do after you read the President's executive order of Feb. 7, 2002?"

Myers said he had fought the good fight before the President's decision. The sense was that, if the President wanted to dismiss Geneva, what was a mere Chairman of the Joint Chiefs to do?

In this connection, Myers included this curious passage in his book:

"By relying so heavily on just the lawyers, the President did not get the broader advice on these matters that he needed to fully consider the consequences of his actions. I thought it was critical that the nation's leadership convey the right message to those engaged in the War on Terror.

"Showing respect for the Geneva Conventions was important to all of us in uniform. This

episode epitomized the Secretary's and the Chairman's different statutory responsibilities to the President and the nation. The fact that the President appeared to change his previous decision showed that the system, however, imperfect, had worked."

Enter Douglas Feith

Interestingly, Myers writes, "Douglas Feith supported my views strongly ... noting that the United States had no choice but to apply the Geneva Conventions, because, like all treaties in force for the country, they bore the same weight as a federal statute."

Myers goes on to corroborate what British lawyer/author Philippe Sands writes in *The Torture Team* about the apparent twinning of Feith and Myers on this issue. Sands says Feith portrayed himself and Myers as of one mind on Geneva.

Just before the President issued his Feb. 7, 2002 executive order, Feith developed this novel line of reasoning: The Geneva Conventions are very important. The best way to defend them is by honoring their "incentive system," which rewards soldiers who fight openly and in uniform with all kinds of protections if captured.

In his book, Myers notes approvingly that this is indeed the line Feith took with the President at an NSC meeting on Feb. 4, 2002, to which Feith had been invited, three days before President Bush signed the order that has now become a smoking gun.

According to Feith, the all-important corollary is to take care not to "promiscuously hand out POW status to fighters who don't obey the rules." "In other words, the best way to protect the Geneva Conventions is to gut them," as Dahlia Lithwick of *Slate* put it in a commentary last July.

I suppose it could even be the case that this seemed persuasive to President Bush, as well. Which would mean that Doug Feith has at least two contenders for the unenviable sobriquet with which Gen. Tommy Franks tagged him - "the f—ing stupidest guy on the face of the earth."

It is not really funny, of course.

Myers "Hoodwinked?"

While researching his book, Sands, a very astute observer, emerged from a three-hour session with Myers convinced that Myers did not understand the implications of what was being done and was "confused" about the decisions that were taken.

Sands writes that when he described the interrogation techniques introduced and stressed that they were not in the manual but rather breached U.S. military guidelines, Myers became increasingly hesitant and troubled. Author Sands concludes that Myers was "hoodwinked;" that "Haynes and Rumsfeld had been able to run rings around him."

There is no doubt something to that. And the apparent absence of Myers from the infamous torture boutiques in the White House Situation Room, aimed at discerning which particular techniques might be most appropriate for which "high-value" detainees, tends to support an out-of-the-loop defense for Myers.

I imagine it should not be all that surprising, given the way general officers are promoted

these days, that Myers' vacuousness-cum deference-board-on-servility-could land him at the pinnacle of our entire military establishment. Certainly, nothing he said or did Tuesday evening would contradict Sands' assessment regarding naïveté.

Myers still writes that he found Rumsfeld to be "an insightful and incisive leader." The general seems to have been putty in Rumsfeld's hands – one reason he was promoted, no doubt.

My best guess is that it is a combination of dullness, cowardice and careerism that accounts for Myers' behavior – then and now. And, with those attributes and propensities firmly in place, falling in with bad companions, as Richard Myers did, can really do you in.

As we said our good-byes Tuesday evening, one of my alumni colleagues lamented my "ugly" behavior, although it was no more ugly than it was on May 4, 2006, during my four-minute debate with Donald Rumsfeld in Atlanta. (Sadly, my encounter with Myers was not broadcast live on TV.)

#### A Plaudit From the Press

In attendance was a reporter from the Washington Post, but his note-taking was confined to computing whether he should take the Post's buyout, or try to hang around for the newspaper's inevitable funeral in a couple of years. (So don't bother looking for a print story on the Myers event.) As we departed, the Post-man gave me what he seemed to think was the ultimate compliment – I should have been a journalist, he said.

I told him thanks just the same – that my experience has been that, unless they promise not to ask "ugly" questions and keep that promise, journalists of the Fawning Corporate Media (FCM) are not permitted to stay around long enough to qualify for a meager 401k – much less an eventual buyout.

At least I was consistent, retaining with such groups an unblemished winning-no-friends-and-influencing-no-people record, originally set three years ago when I had a chance to ask an "ugly" question or two of Donald Rumsfeld.

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