

HASSAN GHUL, MYSTERY DETAINEE 2, AND THE THREE BRADBURY MEMOS

Update, March 12, 2015: We know from the Senate Torture Report that the Techniques memo was about Janat Gul, not Hassan Ghul.

Since the Comey emails have come out, I've been trying to puzzle through why the Bush Administration issued three memos in May 2005—Techniques, Combined, and CAT—rather than just one or two. I guess I sort of understand doing a separate memo on whether the torture program complies with the Convention Against Torture, since that was largely written to placate Congress and ought to have (but did not) involve a more sensitive analysis. But since all the techniques are used in combination, why not join the analysis of Techniques and Combined?

This is to an extent a wildarsed guess. But I think they did three memos to hide the analysis and authorization of a particular detainee's treatment. And I think that detainee was waterboarded.

Two Detainees

It has long been established that Hassan Ghul is discussed in these memos. Dafna Linzer reported on it the day the memos came out (and ~~someone~~ here MadDog also noted it about the same time—gold star to MadDog!!).

But the May 30 CAT memo actually mentions two detainees.

We understand that two individuals, [redacted across two pages] are representative of the high value detainees on whom enhanced techniques have been, or might be, used.

I'll come back to this passage, but for the moment, understand that by the end of May 2005, Bradbury was ready to at least name two detainees in his memo.

The "Techniques" Memo Is about Ghul

I'm not 100% certain, but I believe that the May 10 Techniques memo is—at least ostensibly—exclusively about Ghul. The title of the memo uses the singular—Detainee. And the memo describes the detainee by name (the name is redacted, but it appears to be an appropriate length to spell "Hassan Gul"—CIA spelled "Ghul" without an "h").

You asked for our advice concerning these interrogation techniques in connection with their use on a specific high value al Qaeda detainee named [redacted]. You informed us that the [redacted] and information about al Qaeda's plans to launch an attack within the United States. According to [redacted] had extensive connections to various al Qaeda leaders, members of the Taliban, and the al-Zarqawi network, and had arranged meetings between an associate and [redacted] to discuss such an attack. August 25 [redacted] Letter at 2-3. You advised us that medical and psychological assessments [redacted] were completed by a CIA physician and psychologist, and that based on this examination, the physician concluded "[redacted] medical stable and has not medical contraindications to interrogation, including the use of interrogation techniques" addressed in this memorandum.

So by all appearances, the Techniques memo uses the interrogation of Ghul to reapprove all the techniques used by the CIA, thereby replacing Bybee Two.

The New Techniques Described in Techniques Were

Used with Ghul

The reason they had to write a memo that applied specifically to Ghul (aside from the desire to replace Bybee Two), it appears, is that they used at least one significant new technique on Ghul. The CAT memo tells us that in an August 25, 2004 memo to Daniel Levin, CIA sought authorization to use dietary manipulation, nudity, water dousing, and abdominal slap with Ghul (and this is the passage in which Ghul's name was not redacted, so we can be sure it pertains to Ghul).

For example, after medical and psychological examinations found no contraindications, [redacted]'s interrogation team sought and obtained approval to use the following techniques: attention grasp, walling, facial hold, facial slap, wall standing, stress positions, and sleep deprivation. See August 25 [redacted] Letter at 2. The interrogation team "carefully analyzed Gul's responsiveness to different areas of inquiry" during this time and noted that his resistance increased as questioning moved to his "knowledge of operational terrorist activities." [redacted] feigned memory problems (which CIA psychologists ruled out through intelligence and memory tests) in order to avoid answering questions.

At that point, the interrogation team believed [redacted] "maintains a tough, Mujahidin fighter mentality and has conditioned himself for a physical interrogation." Id. The team therefore concluded that "more subtle interrogation measures designed more to weaken [redacted] physical ability and mental desire to resist interrogation over the long run are likely to be more effective." Id. For these reasons, the team sought authorization to use dietary

manipulation, nudity, water dousing, and abdominal slap. Id. at 4-5. In the team's view, adding these techniques would be especially helpful [redacted] because he appeared to have a particular weakness for food and also seemed especially modest. See id. at 4.

If you compare the list of ten techniques approved by the Bybee Two memo with the thirteen techniques approved in the Techniques memo, the insect in closed space dropped off and four new techniques got added: dietary manipulation, nudity, water dousing, and abdominal slap, precisely those techniques requested on August 25, 2004.

One more detail supports the notion that the Techniques memo was about Ghul. In the section on nudity, it describes the technique as being particularly useful with those perceived to be "modest."

Nudity. This technique is used to cause psychological discomfort, particularly if a detainee, for cultural or other reasons, is especially modest.

This seems to be a reference to the modesty attributed to Ghul in the CAT memo.

The August 25, 2004 Levin Authorization and the August 2 Rizzo Letter Pertain to Ghul

This provides us with two important markers with regards to Ghul's torture. Both the August 25, 2004 request from Levin for authorization to use these techniques and the August 2, 2004 Rizzo Letter to Levin pertained to Ghul.

We know the August 25 memo pertains to Ghul because the CAT memo cites it specifically as the document that requested to use—among other things—the water dousing.

And assuming I'm correct that the Techniques memo discusses Ghul, we can surmise that the August 2 Rizzo Letter also pertained to Ghul.

That's because the Techniques memo cites a description of Ghul's medical assessment that was attached to the August 2 Rizzo Letter.

The medical examination reported [redacted] was obese, and that he reported a "5-6 year history of non-exertional chest pressures, which are intermittent, at times accompanied by nausea and depression and shortness of breath." Medical and Psychological Assessment of [redacted] at 1, attached to August 2 Rizzo Letter. [redacted] he has never consulted a physician for this problem," and was "unable or unwilling to be more specific about the frequency or intensity of the aforementioned symptoms." Id. He also reported suffering "long-term medical and mental problems" from a motor vehicle accident "many years ago," and stated that he took medication as a result of that accident until ten years ago. Id. He stated that he was not currently taking any medication. He also reported seeing a physician for kidney problems that caused him to urinate frequently and complained of a toothache. Id. The medical examination [redacted] showed a rash on his chest and shoulders and that "his nose and chest were clear, [and] his heart sounds were normal with no murmurs or gallops." Id. The physician opined [redacted] "likely has some reflux esophagitis and mild cheek folliculitis, but doubt[ed] that he has any coronary pathology." Id.

This fleshes out the interrogation process described in the CAT memo. On August 2, Rizzo sought authorization for a number of techniques (and included Ghul's medical evaluation with that Letter). Several weeks later, after the interrogators weren't getting the information they wanted, they asked Levin to use new techniques, including water dousing.

The August 19 Letter

Interestingly, in addition to the August 2 Rizzo Letter and the August 25 Levin Authorization, there was an August 19 Letter to Daniel Levin (as well as an earlier July 30 Letter that is not cited in any interesting way), from the same Associate General Counsel of CIA that wrote the August 25 Letter. That August 19 letter appears to relate exclusively to waterboarding.

Now it may be that this August 19 memo was just part of OLC's efforts to work through the repercussions of Jack Goldsmith having withdrawn the Bybee One memo and having placed some limits on waterboarding. After all, most of the citations from the August 19 Letter lay out the faux scientific guidelines for waterboarding that add limits that didn't exist in Bybee Two: two sessions a day, two hours each, six applications of water for 10 seconds or more, no more than 40 seconds.

But I don't think so. I think—but am not sure—that the August 19 Letter was an attempt to get Levin to approve the use of waterboarding with Ghul.

I say that, first of all, because the August 2 Rizzo letter—the one to which Ghul's medical and psychological assessment was attached—also discussed waterboarding.

You have explained that the waterboard technique is used only if: (1) the CIA has credible intelligence that a terrorist attack is imminent; (2) there are "substantial and credible indicators the subject has actionable intelligence that can prevent, disrupt, or delay this attack"; and (3) other interrogation methods have failed or are unlikely to yield actionable intelligence in time to prevent the attack.

Now, keeping in mind that this description of using waterboarding was attached to the same letter, look at the language from Ghul's medical

assessment.

The physician opined [redacted] “likely has some reflux esophagitis and mild cheek folliculitis, but doubt[ed] that he has any coronary pathology.”

This sounds like the language of someone dismissing concerns about a heart problem so that torture could be approved.

There’s one other reason to believe that August 19 is not just general, but was a direct request to use waterboarding with Ghul. We know that Levin approved waterboarding with limitations on August 6.

On July 22, 2004, the Attorney General confirmed in writing to the Acting Director of Central Intelligence that the use of the interrogation techniques addressed by the August 1, 2002, classified opinion, other than waterboarding, would not violate the U.S. Constitution or any statute or treaty obligation of the United States, including Article 16 of the Convention Against Torture. On August 6, 2004, the Acting Assistant Attorney General for OLC advised in writing that, subject to the CIA’s proposed limitations, conditions and safeguards, the CIA’s use of waterboarding would not violate any of those legal restrictions.

It’s possible that the August 19 Letter was just a response to this authorization—an attempt to fill out the safeguards demanded by Levin. But it seems like there would be no need to revisit waterboarding after Levin’s approval unless someone wanted to use it. And giving the timing—several weeks into the one month of intensive interrogation with Ghul—it seems likely that request was to use waterboarding with Ghul.

They Didn’t Waterboard Ghul for Medical

Reasons—So They Water Doused Him Instead

Ultimately, at least according to Techniques, they didn't waterboard Ghul. A footnote in the Techniques memo states that there was a medical contraindication.

20 You have advised us that the waterboard has not been used [redacted]. We understand that there may have been medical reasons against using that technique in his case. Of course, our advice assumes that the waterboard could be used only in the absence of medical contraindications.

And the memo itself reveals that the Counterterrorism Center never approved waterboarding for Ghul.

Prior written approval "from the Director, DCI Counterterrorist Center, with the concurrence of the Chief, CTC Legal Group," is required for the use of any enhanced interrogation techniques. ... We understand that, as to the detainee here, this written approval has been given for each of the techniques we discuss, except the waterboard.

It appears that—either because Levin wouldn't approve waterboarding with Ghul, because the doctor wouldn't, or because CTC wouldn't—they decided to come up with those new techniques: dietary manipulation, nudity, abdominal slap, and—most interestingly—water dousing.

The Techniques memo describes water dousing in similarly faux scientific terms as it does waterboarding: you can use 41 degree water for 20 minutes, 50 degree water for 40 minutes, or 59 degree water for 60 minutes. They claim the water never enters the detainee's mouth or nose—so at least in theory, this is not controlled drowning. Given all the discussion of hypothermia, it appears that this is instead controlled freezing.

So that appears to be what happened to Ghul: they used this water dousing based on oral authorization from Daniel Levin in August, and insisted on getting an OLC memo to approve the new techniques in May 2005.

The Combined Memo Pertains to Detainee 2

All of which leads me to believe that the May 10, 2005 Combined memo pertains to Detainee 2, the other Detainee mentioned in the CAT memo—and that the memo was designed to authorize that Detainee’s waterboarding, which is still being covered up.

Now, to be sure, the Combined memo pretends to be about multiple detainees, as indicated by its title, which uses “detainees” in the plural. And there are a number of aspects of the “Prototypical Interrogation” that appear to describe Ghul’s interrogation, particularly the abdominal slaps and the repeated water dousing.

But it’s clear that the ultimate point of the memo is to approve waterboarding, to be used in conjunction with dietary manipulation and sleep deprivation. And the memo relies not on the August 19, 2004 Letter to Levin (though it does cite it for the faux scientific limits on waterboarding), but on the April 22, 2005 fax written in the middle of the OLC memo drafting process.

Now, aside from the Techniques memo’s claim that Ghul was not waterboarded and the seeming substitution of water dousing for waterboarding, I think the Combination memo deals primarily with the other detainee because of the way they refused to describe his torture. Recall that the Alberto Gonzales and his COS refused to make the Combined memo specific to one detainee.

I just finished a long call from Ted Ulllyot. He said he was calling to tell me that “circumstances” were likely to require that the second opinion “be sent over tomorrow.” He said Pat had shared my concerns, which he understood to be concerns about the prospective nature of

the opinion and its focus on
“prototypical” interrogation.

[snip]

He mentioned at one point that OLC didn’t feel like it could accede to my request to make the opinion focused on one person because they don’t give retrospective advice. I said I understood that, but that the treatment of that person had been the subject of oral advice, which OLC would simply be confirming in writing, something they do quite often.

The excuse Ulliot gave Comey looks even more bogus when you consider that the Techniques memo—issued on the same day as the Combined memo—explicitly ties its analysis to Ghul. And the Combined memo even admits, sort of, how unusual it was to write a general memo like this, not tied to any particular individual.

Finally, in both of our previous opinions about specific techniques, we evaluated the use of those techniques on particular identified individuals. Here, we are asked to address the combinations without reference to any particular detainee. As is relevant here, we know only that an enhanced interrogation technique, such as most of the techniques at issue in Techniques, may be used on a detainee only if medical and psychological personnel have determined that he is not likely, as a result, to experience severe physical or mental pain or suffering. Techniques at 5. Once again, whether or not detainees would, in the relevant ways, be like the ones previously at issue would be a factual question we cannot now decide.

In other words, OLC was doing something very unusual in writing the opinion so abstractly—and

even admitted as much in its body (though the admission may have been a response to Comey's objections).

Given the explicit detail they give of Ghul's interrogation in the other two memos (particularly CAT), I don't think he can be the detainee in question (unless the details they give elsewhere are blatant lies).

The CAT Memo Mentions—But Doesn't Describe—Detainee 2

The silence about Detainee 2 may also extend to the CAT memo, even though it mentions him explicitly. Take the passage where the memo describes Ghul and Detainee 2 as the sort of people who get tortured.

We understand that two individuals, [redacted across two pages] are representative of the high value detainees on whom enhanced techniques have been, or might be, used. On [redacted] the CIA took custody of [redacted], whom the CIA believed had actionable intelligence concerning the pre-election threat to the United States. See Letter from [redacted], Associate General Counsel, Central Intelligence Agency, to Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel at 2 (Aug. 25, 2004) ("*August 25 [redacted] Letter*"). [Redacted] extensive connections to various al Qaeda leaders, members of the Taliban, and the al-Zarqawi network, and intelligence indicated [redacted] arranged a ... meeting between [redacted] and [redacted] at which elements of the pre-election threat were discussed." *Id.* at 2-3; see also Undated CIA Memo, [redacted].

Intelligence indicated that prior to his capture, [redacted] "perform[ed] critical facilitation and finance activities for al-Qa'ida," including

“transporting people, funds, and documents.” Fax for Jack Goldsmith, III, Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence Agency (March 12, 2004). The CIA also suspected [redacted] played an active part in planning attacks against United States forces [redacted] had extensive contacts with key members of al Qaeda, including, prior to their captures, Khalid Sheikh Mohammed (“KSM”) and Abu Zubaydah. See *id.* [redacted] was captured while on a mission from [redacted] to reestablish contact with al-Zarqawi. See CIA Directorate of Intelligence, *US Efforts Grinding Down al-Qa’ida 2* (Feb 21, 2004).

Reading it with all the redactions (it’s on page 6 of the CAT memo), it appears that the first paragraph (using parallel structure) ought to describe Detainee 2, while the second paragraph ought to describe Ghul. Except that the description in the first paragraph—particularly its mention of the detainee arranging a meeting to plan an attack, and its reference to al Qaeda, Taliban, and Zarqawi ties—matches the description of Ghul from the Techniques memo.

You asked for our advice concerning these interrogation techniques in connection with their use on a specific high value al Qaeda detainee named [redacted]. You informed us that the [redacted] and information about al Qaeda’s plans to launch an attack within the United States. According to [redacted] had extensive connections to various al Qaeda leaders, members of the Taliban, and the al-Zarqawi network, and had arranged meetings between an associate and [redacted] to discuss such an attack. August 25 [redacted] Letter at 2-3.

In addition, that first paragraph cites the August 25 memo, which we know asks for authorization to water douse Ghul. In other words, after introducing two “typical” detainees on whom torture can be used, they go on to describe just one at length—Ghul. Later in the memo, as we have seen, Bradbury describes the interrogation used with Ghul and the request to use water dousing, but he once again does not do the same for Detainee 2.

Somebody’s Lying

This theory is all very neat—except it means somebody is lying, either to Comey, or in the CAT memo.

From Comey’s emails, it appears that he believed that the Combined memo pertained to torture that had already occurred.

He mentioned at one point that OLC didn’t feel like it could accede to my request to make the opinion focused on one person because they don’t give retrospective advice. I said I understood that, but that the treatment of that person had been the subject of oral advice, which OLC would simply be confirming in writing, something they do quite often. [my emphasis]

And he suggests he can make the memo right by doing some fact gathering.

I told [Pat Philbin] to go back to [Bradbury and Ted Ulyot] and reiterate ... the fact that I would oppose any opinion that was not significantly reshaped (which would involve fact gathering that we could not complete by Friday).

I always took that to mean he would figure out what had happened to the detainee in question, and make the memo specific to that detainee.

But the CAT memo twice claims that waterboarding

had only been used three times.

Consistent with its heightened standard for use of the waterboard, the CIA has used this technique in the interrogations of only three detainees to date (KSM, Zubaydah, and 'Abd Al-Rahim Al-Nashiri) and has not used it since the March 2003 interrogation of KSM. See Letter from Scott W. Muller, General Counsel, Central Intelligence Agency, to Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel at 1 (June 14, 2004).

[snip]

Once again, the CIA's practice confirms the program's selectivity. CIA interrogators have used the waterboard only on three detainees to date—KSM, Zubaydah, and Al-Nashiri—and have not used it since March 2003.

Now, if Detainee 2 had already been waterboarded, then these two claims would be patently false. Then again, it is possible that Detainee was about to be waterboarded in May 2005. This would explain why the Combined Memo read like it was prospectively authorizing waterboarding—because it would have been. And it would explain the extensive references to Abu Zubaydah and KSM in the CAT memo—because Bradbury needed to make sure waterboarding was included in his analysis. And it would provide a more plausible explanation for Addington and Cheney's rush than the one they gave—that they were “getting killed on the Hill.”

But if it's true that this was all an elaborate ruse to authorize waterboarding Detainee 2, then someone gave Comey a totally false understanding of what or who the Combined memo pertained to. However, since Techniques—authorized on the same day as the Combined memo—authorized techniques used on Ghul pursuant to a verbal authorization which we know were used in combination, it

wouldn't have been too hard to lie to Comey and pretend the Combined memo pertained exclusively to Ghul. And that would sure explain why Addington and Cheney didn't want to give Comey any time to do any fact gathering, because then he might expose the ruse.

Like I said—some of this is a wild guess, though much of it seems to be supported by the memos. But it might explain why there was so much pressure surrounding these three memos in 2005.