

THE WATERBOARDING AUTHORIZATION THE TORTURERS USED?

I wanted to fully explain what I think may be the backstory to the LAT's revelation that the torturers weren't aware of the limits in the Bybee Two memo. Here's what the LAT said:

Beyond that, officials said it wasn't clear that any CIA interrogators were ever informed of the limits laid out in the Justice Department memo.

"A number of people could say honestly, correctly, 'I didn't know what was in it,' " said a former senior U.S. intelligence official familiar with the inner workings of the interrogation program.

A number of you have suggested (correctly, on the merits as presented by LAT) that if the torturers didn't know what, specifically, was in the OLC memos, then they couldn't very well think their torture was legal.

But that assumes they don't have another document that, they may have been led to believe, authorized the torture they did.

On July 24, 2002, OLC verbally authorized a number of torture techniques, **not including waterboarding**. Around the same time, DOD urgently asked JPRA—the entity that administered SERE—to provide a list of its techniques so it could reverse-engineer interrogation techniques from them. In response, JPRA sent a memo with an attachment that described its techniques. Sort of.

(U) On July 26, 2002, JPRA completed a second memorandum with three attachments to respond to the additional questions from the General Counsel's office. The memo stated that "JPRA has arguably

developed into the DoD's experts on exploitation and as such, has developed a number of physical pressures to increase the psychological and physical stress on students ..."

In the memo, JPRA informed the General Counsel's office that it had already "assist[ed] in the training of interrogator/exploiters from other governmental agencies charged with OEF exploitation of enemy detainees."¹⁹⁰ The memo also stated:

Within JPRA's evolving curriculum to train interrogators/exploiters many interrogation approaches are taught along with corresponding options for physical pressures to enhance the psychological setting for detainee interrogation. Several of the techniques highlighted (Atch 1) as training tools in JPRA courses, used by other SERE schools, and used historically may be very effective in inducing learned helplessness and 'breaking' the OEF detainees' will to resist."

The first attachment to the July 26, 2002 memo was "Physical Pressures used in Resistance Training and Against American Prisoners and Detainees."¹⁹² That attachment included a list of techniques used to train students at SERE school to resist interrogation. The list included techniques such as the facial slap, walling, the abdomen slap, use of water, the attention grasp, and stress positions. ¹⁹³ The first attachment also listed techniques used by some of the service SERE schools, such as use of smoke, shaking and manhandling, cramped confinement, immersion in water or

wetting down, and waterboarding.

Now, the timing on this document exchange is critically important. This memo was sent to DOD on July 26. The memo was forwarded to OLC (possibly by way of John Rizzo) "for something they were working on," but it's not clear when (though it had to have been before August 1, since another memo attached with this one was cited in the Bybee Two memo). But on July 26, the day the memo was sent to DOD, at least, OLC verbally approved waterboarding.

Thus, it seems possible that the written description of waterboarding that OLC had when it verbally approved waterboarding on July 26 was the memo sent from JPRA.

I said above that this memo described the SERE techniques, sort of. What it really described was the SERE techniques as James Mitchell and Bruce Jessen had reverse engineered into torture. The memo, SASC tells us, included an emphasis on "learned helplessness," which we know to be Mitchell's intellectual obsession. And, more importantly, the memo described the torture techniques as Mitchell's torturers would go on to practice them—not as they were described in the Bybee Two memo. As I've reported before, the memo described waterboarding using the large volumes of water that the CIA IG report would later describe was one way the torture as practiced exceeded the torture as authorized in the Bybee Two memo.

JPRA's description of the waterboarding technique provided in that first attachment was inconsistent in key respects from the U.S. Navy SERE school's description of waterboarding. According to the Navy SERE school's operating instructions, for example, while administering the technique, the Navy limited the amount of water poured on a student's face to two pints. However, the JPRA attachment said that "up to 1.5 gallons of water" may be

poured onto a "subject's face." While the Navy's operating instructions dictated that "[n]o effort will be made to direct the stream of water into the student's nostrils or mouth," the description provided by JPRA contained no such limitation for subjects of the technique. While the Navy limited the use of the cloth on a student's face to twenty seconds, the JPRA's description said only that the cloth should remain in place for a "short period of time." And while the Navy restricted anyone from placing pressure on the chest or stomach during the administration of this technique, JPRA's description included no such limitation for subjects of the technique.

Attachment one also listed tactics derived from JPRA SERE school lesson plans that were designed to "induce control, dependency, compliance, and cooperation," including isolation or solitary confinement, induced physical weakness and exhaustion, degradation, conditioning, sensory deprivation, sensory overload, disruption of sleep and biorhythms, and manipulation of diet.

Also note—this memo included stuff, significantly dietary manipulation, that was not included in the Bybee Two memo, but was used with Abu Zubaydah and was ultimately integrated into the 2005 Bradbury memos on torture. (It also included water dousing, which was also incorporated into the torture regime.)

Seeing as how this memo came from the same department that Mitchell and Jessen came from (and which was still championing their torture all over government), chances are good that the torturers did see this document, if not write it themselves.

See how the gimmick works? CIA gets a verbal

authorization for torture that may well have relied on a description of waterboarding that not only included fewer limits, but remarkably described waterboarding as it would be practiced. It gets a written authorization five days later that sets some limits on the waterboarding. But it never shows that written authorization to the torturers.

Tricksy torturers! They've invented a way to use this JPRA document—and not the OLC memo—as the "authorization" for their torture.

I look forward to hearing how bmaz and Mary (and the rest of the lawyers in the crowd) rip up this scheme as a legal ploy.

But there's one more wrinkle.

There were two other documents sent along to DOD and then to OLC with that memo. Another one included some stats about waterboarding and other torture that (as I said above) were cited in the final OLC memo. And the third one is this memo, a JPRA memo explaining all the reasons why torture—and it does use the term "torture"—is ineffective in interrogation.

Conceptually, proponents envision the application of torture as a means to expedite the exploitation process. In essence, physical and/or psychological duress are viewed as an alternative to the more time consuming conventional interrogation process. The error inherent in this line of thinking is the assumption that, through torture, the interrogator can extract reliable and accurate intelligence. History and a consideration of human behavior would appear to refute this assumption. (NOTE: The application of physical and or psychological duress will likely result in physical compliance. Additionally, prisoners may answer and/or comply as a result of threats of torture. However, the reliability and accuracy information must be

questioned.)

So, per the LAT, the torturers may well be able to claim they never saw the guidelines in the Bybee Memo. Per the verbal authorization, they may be able to claim they relied on the description sent by JPRA, which happens to describe waterboarding as it was used, not as the Bybee Two memo described it.

But they'd also be relying on an approval process that ties that description of waterboarding directly to a description of SERE techniques like waterboarding as torture, a description that makes clear that torture doesn't work.