# JONATHAN FREDMAN ON APPROVALS

As you probably recall, there was a Counter Resistance Strategy Meeting at Gitmo on October 2, 2002 (the minutes for it start on page 219 of this PDF). At the meeting, Jonathan Fredman, then the Counterterrorism Center's top lawyer, famously said, "If the detainee dies, you're doing it wrong."

More interesting (for my present purposes, anyway) are his comments about how the CIA got approval for torture. First, he claims that the US did not sign Article 16 of the Convention Against Torture because the 8th Amendment covers that already.

> Fredman: The Torture Convention prohibits torture and cruel, inhumane and degrading treatment. The US did not sign up on the second part, because of the 8th amendment (cruel and unusual punishment), but we did sign the part about torture. This gives us more license to use more controversial techniques.

It's a bizarre argument to make, not just because it's false, but because at other times the CIA and DOJ rationalized ignoring Article 16, they focused on the 5th Amendment, not the 8th.

Later, Fredman has a conversation about what approval process DOD might use to be able to use torture.

> [GTMO Interrogation Control Element (ICE) Chief Dave] Becker: Would we get blanket approval or would it be case by case?
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> Fredman: The CIA makes the call internally on most of the types of techniques found in the BSCT paper, and

> this discussion. Significantly harsh techniques are approved through the DOJ.
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> [Director for Intelligence (J-2)] LTC Phifer: Who approves ours? The CG? SOUTCOM CG?
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> Fredman: Does the Geneva Convention apply? The CIA rallied for it not to.
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> Phifer: Can we get DOJ opinion about these topics on paper?
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> LTC Diane Beaver: Will it go from DOJ to DOD?
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> Phifer: Can we get to see a CIA request to use advanced aggressive techniques?
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> Fredman: Yes, but we can’t provide you with a copy.

As you know, I’ve been tracking the way that Jim Haynes and David Addington parsed answers about when they saw the Bybee Two memo, describing the torture techniques approved for Abu Zubaydah; Addington even seemed to be dodging questions about whether or not he showed anyone at Gitmo the memo. And this exchange seems to suggest CTC was willing to share its DOJ backup with Gitmo officers.

Mind you, this meeting took place a week after Addington and Haynes went on their Gitmo field trip and the context seems to suggest that Phifer, at least, has not seen the Bybee Two memo. (Major General Dunlavey, who had side conversations with Jim Haynes and others—probably Addington—during the field trip was not present at this meeting.)

But this conversation seems to suggest that Fredman was anticipating show the request for OLC authorization to torture, if not the Bybee Two memo itself, to the Gitmo officers.

Also, note that Fredman says CIA approved "most of the types of techniques" internally, leaving only the significantly harsh techniques to DOJ

authorization. This seems to conflict with the stories of near-daily cables from Thailand authorizing torture techniques for Abu Zubaydah (which reportedly went through CTC, so probably through Fredman). But it suggests at least in October 2002, before detainees started dying, Fredman didn’t consider the Bybee Two memo to be authorization for less harsh methods, presumably including stress positions.