

THE WEIRD CIRCUMSTANCES SURROUNDING HASSAN GHUL'S INTERROGATION

As I noted earlier, the AP and other outlets have reported that Hassan Ghul was among the first to inform American interrogators of the importance of Abu Ahmed al-Kuwaiti. Here's what the AP reported.

Then in 2004, top al-Qaida operative Hassan Ghul was captured in Iraq. Ghul told the CIA that al-Kuwaiti was a courier, someone crucial to the terrorist organization. In particular, Ghul said, the courier was close to Faraj al-Libi, who replaced Mohammed as al-Qaida's operational commander. It was a key break in the hunt for in bin Laden's personal courier.

"Hassan Ghul was the linchpin," a U.S. official said.

Given the apparent importance of Ghul's interrogation, as well as reports that he was freed at some point, I wanted to point out several oddities that may relate to his interrogation.

A Long Delay Before Entering CIA Interrogation

Here's an outdated timeline I did of Ghul's treatment (I'm working on an updated one). But we know he was first reported captured on January 22 or 23 2004. Yet, CIA was just getting approval for interrogation techniques to use with Ghul in August 2004, seven months later.

We know this from an unredacted reference to Ghul in the May 30, 2005 CAT Memo.

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.” Id at 3. [redacted] feigned memory problems (which CIA psychologists ruled out through intelligence and memory tests) in order to avoid answering questions. Id.

At this 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.

The document referred to here was a August 25, 2004 memo from the CIA to Daniel Levin, who was acting OLC head after Jack Goldsmith left in 2004. While we haven’t seen that memo, we have seen his response, written the following day, which approves the use of dietary manipulation, nudity, water dousing, and abdominal slap. That letter also references an August 13, 2004 meeting (at which water dousing was clearly discussed), and a July 30, 3004 letter, with attachment, and the attachment to a August 2 letter.

In other words, from this correspondence, it would appear that it took at least six months (from late January to late July) before the CIA got around to torturing Ghul.

This, in spite of the fact that an earlier reference to the August 25 letter claims that CIA believed Ghul had information about pending attacks.

On [redacted] the CIA took custody of [redacted] whom the CIA believed had actionable intelligence concerning the pre-election threat to the United States. [reference to August 25 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]

That paragraph is followed by more intelligence that may pertain to Ghul alone, to another detainee alone, or to Ghul and then another detainee:

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 L. 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 capture, Khalid Shaykh Muhammad ("KSM") and Abu Zubaydah. See id. [Redacted] was captured while on a mission from [redacted] to establish contact" with al-Zarqawi. See CIA Directorate of Intelligence, US Efforts Grinding Down al-Qa'ida 2 (Feb. 21, 2004)

In addition to the information on Ghul contained in the August 30 CAT Memo, there's further reference to correspondence on Ghul in the May 10, 2005 Techniques memo (which for a variety of reasons must have been written to pertain to Ghul specifically).

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] had 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 completed by a CIA physician and psychologist, and that based on this examination, the physician concluded [redacted] medically stable and has no medical contraindications to interrogation, including the use of interrogation techniques addressed in this memorandum. 20

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 only be used in the absence of medical contraindications.

The following footnote describes, among other things, that Ghul "was obese, and that he reported a "5-6 year history of non-exertional chest pressures."

And there's this information, which was leaked to Fox:

Ghul, a Pakistani, is known to have been an Al Qaeda member since the early 1990s, when Al Qaeda was established.

[snip]

One official said Ghul was “definitely in Iraq to promote an Al Qaeda, Islamic extremist agenda.” Ghul is described by officials as a facilitator known in terrorist circles as “the Gatekeeper” who moves money and people around the Middle East, Africa and possibly beyond. Officials added that Ghul has extensive contacts in Al Qaeda and wider terrorist communities, and is thought to have had some kind of connection to the 1998 East African embassy bombings, though officials stress those links are still being probed.

All of which presents us with the highly implausible possibility that Ghul was captured in January 2004, believed to be a key facilitator for al Qaeda, yet not entered into the CIA program and tortured until six or seven months later.

There are several possible explanations for this odd fact, including **(note, these are all possibilities—I’m not saying they definitely happened)**:

- Ghul’s transfer to CIA custody was delayed by concerns about removing him from Iraq
- Ghul was moved to CIA only after they got intelligence about pre-election attacks
- Ghul’s torture happened under DOD, not CIA, custody
- CIA required Ghul’s interrogation to be approved

personally by the
Principal's Committee, which
it did without the advice of
Jack Goldsmith or Jim Comey
▪ Ghul's interrogation
approvals were retroactive

I believe some combination of these factors explains the delay between the time when Ghul was captured and when CIA first got approval for his interrogation. If I had to make a wild guess, I think DOJ prevented Ghul's transfer into the CIA program for some time, and once he was transferred (with approval directly from the Principals Committee and possibly without any more formal legal cover), CIA used water dousing, which had not yet been formally approved, all of which forced them to retroactively approve his treatment.

DOJ may have had concerns about removing Ghul from Iraq

One of the things that may have delayed Ghul's CIA interrogation is a concern whether the Geneva Conventions prohibited moving someone outside of territory we occupied. In October 2003, Goldsmith had pissed off Cheney and Addington by determining that Iraqi members of al Qaeda could not be moved outside of Iraq. Then, on March 18, 2004, he drafted a memo that concluded that "al Qaeda operatives captured in occupied Iraq who are neither citizens nor permanent residents of Iraq are not entitled to "protected person" status." [Ed.: See the update below.] That should have provided approval for Ghul, as a Pakistani, to be removed from Iraq. But Goldsmith claims that that memo was neither finalized nor relied upon to render anyone.

In any event, I never finalized the draft, it never became operational, and it was never relied on to take anyone outside of Iraq.

Nevertheless, there appears to have been a

flurry of discussions about rendering someone out of Iraq from June 29 to at least July 15. Then in October 2004, Doug Jehl wrote a story (rebutting an earlier Dana Priest one) suggesting that the Administration had formulated an entirely new opinion on rendering people out of Iraq, one that didn't rely on Goldsmith's earlier one. That story claimed, among other things, that any detainee moved out of Iraq had been moved before March 2004.

While the truth of the matter remains unclear, the debate is important for Ghul's treatment for several reasons:

- The Priest and Jehl reporting was a key impetus to pressure from Congress about ghost detainees; the May 2005 torture memos—written in part about Ghul—were in large part a response to that pressure.
- If Jehl's reporting is correct, it would say either Ghul was rendered out of Iraq before Goldsmith drafted his memo, not until September time frame, or without the coverage of an OLC memo.
- Clearly there was a great deal of debate before Goldsmith's departure on this topic in the weeks leading up to his hasty departure.
- As I'll show, it appears the White House may have bypassed OLC on some issues

in this time frame.

Ghul may have been moved to CIA after a delay

Another possible explanation for the delay in approvals for Ghul's treatment is that he wasn't actually moved to CIA's custody for some time. Given what was immediately leaked to Fox, this seems remarkable. But the language used in the CAT memo seems to support such an explanation:

On [redacted] the CIA took custody of [redacted] whom the CIA believed had actionable intelligence concerning the pre-election threat to the United States.

The first redaction must be a date, one that distinguishes when the US captured Ghul from when CIA actually took custody. And the reference to the pre-election threat suggests that CIA may have gotten new information, which in turn led them to request custody of Ghul. And in this passage,

You informed us that the [redacted] had information about al Qaeda's plans to launch an attack within the United States.

The redaction—with the article “the” preceding it—seems to refer to a source of intelligence, not to Ghul himself.

That would raise some more questions. As noted above, the CIA wrote a memo to Jack Goldsmith about a detainee on March 12:

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 L. Goldsmith, III, Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence

Agency (March 12, 2004).

While (as I said) the reference may be to Ghul but may also be to someone else, the description of someone who transported “people, funds, and documents” sounds remarkably like the description leaked to Fox.

Ghul is described by officials as a facilitator known in terrorist circles as “the Gatekeeper” who moves money and people around the Middle East, Africa and possibly beyond.

In other words, if that reference is to Ghul, then it suggests that CIA was talking about his value as early as March—and just one week before Goldsmith wrote the memo on rendering people out of Iraq. In addition, all this took place just after General Taguba submitted the first draft of his report on prisoner abuse on March 9. And finally, note that DOD was trying, at a minimum, to institutionalize its frequent flyer program (a loophole invented to use sleep deprivation)—and may have been trying to get approval for extended isolation—in March 2004.

These details are all really sketchy. But at a minimum, at the same time as the Abu Ghraib scandal was becoming clear within DOD, there was some renewed focus on DOD’s interrogation techniques. That discussion happened at the same time as another discussion about rendering people out of Iraq. And both of those discussions happened at the same time as CIA wrote to Jack Goldsmith trying to get something approved for a detainee who may or may not be Ghul.

Ghul’s interrogation may have occurred under DOD

Which leads to another possibility: that Ghul’s interrogation happened (or at least started) in DOD custody, not CIA custody.

As Goldsmith and a number of reports have explained, he told Jim Haynes in December 2003

not to rely on the March 2003 Yoo memo on torture. But, as I have noted, he did not formally withdraw it.

Goldsmith told Jim Haynes not to rely on the Yoo memo in December 2003. But he didn't start his efforts on replacing the Yoo memo until after DOD asked to use—at a minimum—extended isolation in March 2004 (and after DOD, but according to the *Terror Presidency*, not Goldsmith, knew about Abu Ghraib). The first draft was not completed until after the Abu Ghraib scandal had broken (remember that Goldsmith was very busy trying to salvage Cheney's illegal wiretap program between March 10 and May 6, 2004). Then, after writing six drafts between the time he started this process and mid-June, he started attacking the Yoo memo directly. Significantly, the very day Goldsmith told Ashcroft he would withdraw the Bybee One memo, he also had Bradbury put this into a footnote on the first page of a draft memo purportedly replacing the Yoo memo:

The Yoo Memo "is flawed in so many important respects that it must be withdrawn." June 15, 2004 draft at 1, n.l.

This language speaks of withdrawing the memo as something that had yet to be done, suggesting that the Yoo Memo was not, in fact, operationally withdrawn yet in June 2004.

In a September memo summarizing all the advice OLC had given on interrogation, Daniel Levin seemed confused about how the techniques used by DOD had been approved. But it was not until Levin's final day as acting OLC head on February 4, 2005—at a time when he was working on the Techniques memo that pertained directly to

Ghul—that Levin formally withdrew the March 2003 memo. Now, Levin did say that he understood that DOD had not relied on the March 2003 memo after December 2003, but I always find the last things OLC heads do before they're pushed out the door to be notable. And, at a time when Levin was writing an OLC memo formalizing the advice given on Ghul, he was trying to make it very clear to DOD that they needed to restrain their interrogation practices.

And so it's possible that in that period after Ghul was captured as the Abu Ghraib scandal slowly developed and DOJ debated over rendering people out of Iraq, DOD did something with Ghul that only CIA was supposed to have done.

CIA may have required Ghul's interrogation to be approved by the Principals Committee

We know that in June 2004, George Tenet asked for—and finally, in July 2004, received—confirmation that the White House approved of the torture program.

But it appears that on July 2, two things happened.

First, CIA appears to have gotten possession of a detainee and asked DOJ—but not necessarily OLC—for permission to torture him.

The Vaughn Index of OLC documents relating to the torture program gives a few details of what led up to the request. Document 44 is a fax from CIA to DOJ (note, nothing in the description refers to OLC) noting the CIA has taken custody of a particular detainee [ed: I'm not sure they had taken custody at this point].

This is a two-page memo with a fax coversheet, providing legal advice regarding the CIA securing custody of a detainee and use of interrogation methods.

Document 45 is a document—apparently internal to CIA—requesting of CIA’s General Counsel permission to torture a detainee.

This document is a ten page memo from the CIA’s Office of General Counsel requesting legal guidance on the proposed interrogation of a specific detainee.

And on that very same day, the Principals Committee met and talked about a particular detainee. In his response to the OPR Report, Jay Bybee said they discussed Janat Gul.

Deputy Attorney General James Comey. Comey joined Ashcroft at a NSC Principals Meeting on July 2, 2004 to discuss the possible interrogation of CIA detainee Janat Gul. Report at 123. Ashcroft and Comey conferred with Goldsmith after the meeting, leading to Goldsmith’s letter to Muller approving all of the techniques described in the Classified Bybee Memo except for the waterboard. Id

But for reasons I lay out here, I think it most likely it was Hassan—and not Janat—Ghul who was discussed (note, Bybee cites a redacted portion of the OPR report itself, so the error, if it was one, may have come from that report).

And that, in turn, is significant because it appears that the Principals came to a decision about the treatment of this particular detainee after Jim Comey and John Bellinger left the meeting (it appears Jack Goldsmith was not at the meeting at all).

Some time after the meeting that day, Muller sent John Bellinger a memo and CCed it to Comey. The cover sheet twice directed “EYES ONLY NO COPIES,”

suggesting Comey shouldn't share it, perhaps not even with Goldsmith. In addition to the cover sheets, the one page memo—on plain paper, not CIA stationary, explained:

Subsequent to today's meeting we have had further discussions that clarified the extent of today's approval of certain techniques. The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense. I have relayed this information to the CIA's Counterterrorist Center.

In other words, after Comey and Bellinger left the meeting, "we" (Muller doesn't explain who all were included in that "we") "had further discussions" in which they "clarified the extent of today's approval of certain techniques."

This is Muller telling Comey (and Bellinger) what got approved. This is CIA telling DOJ what got approved, not DOJ telling CIA what was legal.

While John Ashcroft signed off on this treatment, it appears that none of the torture skeptics did, at least not until after the meeting.

And of course that means that the approval exposed people like Dick Cheney more than other torture decisions made.

Retroactive approval of Ghul's treatment

All of which leads to the possibility that either DOD or the Principals Committee approved

treatment for Ghul that OLC had not formally approved yet.

It's possible that that treatment was the waterboard. Ghul's assessment, written on August 2, seems to have approved him for any treatment. And just days after that assessment, on August 6, Daniel Levin approved the use of waterboarding, promising a follow-up memo memorializing that advice which, for all intents and purposes, was the May 10 Techniques memo that pertained to Ghul. It is possible, for example, that all the OLC assertions that CIA only waterboarded 3 detainees (Zubaydah, al-Nashiri, and KSM) pointedly excluded whatever DOD did.

But I think it just as likely DOJ had to retroactively authorize water dousing. John Yoo had claimed to approve water dousing in his Legal Principles documents. Yet Bybee would ultimately testify to Congress that dousing was used without prior approval. And while the Techniques memo pertaining to Ghul basically reapproved everything that the Bybee Memo had already approved in 2002, it added water dousing, a technique first formally approved by OLC in the August 26 letter from Levin.

And while I think it pertains to a different detainee, we do know that one of the problems Jim Comey had with the Combined Memo—approved the same day as the Techniques memo—was that it provided retrospective advice to use techniques that Steven Bradbury refused to spell out in the memo itself.

The emails themselves explain the rush—and that rush should have been the NYT story. On April 28, 2005, Comey wrote:

[Alberto Gonzales's COS Ted Ulyot] 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.

In other words, the May 10, 2005 authorization to use combined techniques was designed to give legal cover for something that had already happened.

The Combined Memo went out of its way to approve waterboarding used in conjunction with sleep deprivation; CIA even provided supplemental information to Bradbury they had not shared with Levin so he could include that combination in his memo. So it seems there is one detainee on whom that combination was used that we may not know about (again, it may have happened in DOD custody). I don't think that detainee was Ghul, but it is a possibility.

All of which doesn't explain what happened to Ghul—nor where he is now, when he was last purportedly seen in Pakistani custody in 2007.

But it suggests there are a whole lot of weird things about Ghul's treatment. And as more people discuss his role in finding Osama bin Laden, it'd be nice to resolve the source of all this weirdness.

Update: I've just reviewed the testimony from Cage Prisoners that pertains to Ghul, from a detainee who said he was jailed next to him in Pakistan.

Hassan Ghul – he was captured in Iraq in 2004 and he was in the cell left to me. I talked to him when no guards were around me and he told me that the CIA kept him in a secret location for 2 years. After 2 ½ years they handed him to the Pakistan authorities. I believe he was a Pakistani national. He was

there when I arrived and he was moved in January 2007.

Ahmed was arrested August 20, 2006. So Ahmed was jailed with Ghul for five months. The timing laid out here: that the CIA held him for two years (so starting at least in August 2004), with the different timing (2½ years) may support the possibility of him being transferred out of Iraq and into CIA custody (Adam Goldman has said he was in Romania) in mid-2004.

Update: One more detail I meant to mention. Note that John McLaughlin is quoted in this Jose Rodriguez piece. But he doesn't say anything directly about torture leading to OBL.

Former Bush officials say that the use of enhanced interrogation techniques is misunderstood. "The main thing that people misunderstand about the program is it was intended to encourage compliance," says John McLaughlin, deputy director of the Central Intelligence Agency during the period in which waterboarding was used. "It wasn't set out to torture people. It was never conceived of as a torture program."

I find that interesting because, as acting head of the CIA from mid-July to mid-September 2004, he would have been directly in the chain of command for whatever happened to Ghul (if his interrogation happened when the record claims it did, in August 2004). Particularly given that Ghul is the one detainee (aside from possibly Mohammed al-Qahtani) who may have said something useful about Abu Ahmed under torture, I find his silence on specifics, particularly relating to Ghul, notable.

Update: WRT the Goldsmith memo on rendering people out of Iraq, this law review article (see pp. 54-59) points out there are two opinions. One, finalized and dated March 18, that argued that effectively argued that those engaged in

global armed conflict with the US were
deportable, and another draft, dated March 19,
that stated even foreigners who are protected
can be deported if they qualify under local law.