

MICHAEL HAYDEN'S STONE WALLING

As a number of outlets have reported, in his book, Daniel Klaidman describes Michael Hayden's effort to convince Obama to approve 6 torture techniques by demonstrating some of them on David Shedd.

But [Hayden's] most unusual prop was David Shedd, the deputy DNI for policy, plans, and requirements. Not long into his presentation, Hayden called Shedd over. Suddenly, unexpectedly, Hayden slapped Shedd's face. Then he grabbed him by the lapels and started to shake him. He'd wanted to throw him up against the wall during this demonstration, but there were chairs in the way. Instead he explained to Obama and his aides about the interrogation technique known as "walling," in which detainees were thrown against a flexible artificial wall that made a loud noise on impact but caused little physical pain.

These were three of the remaining six techniques that made up the harsh interrogation methods the CIA had relied on since shortly after 9/11. (The most controversial practice, the simulated-drowning technique known as waterboarding, had not been used since 2003.) The others were the playing of loud music, keeping the lights on in the cell twenty-four hours a day, and sleep deprivation.

According to this description, on December 9, 2008, Michael Hayden told Obama the 6 permissible torture techniques at that time were:

- facial slap
- attention grasp

- walling
- use of music
- use of light
- sleep deprivation

Really? That's odd.

If I'm not mistaken, the last formal Bush OLC memo embracing torture was the July 20, 2007 memo authorizing the following six techniques:

- facial hold
- attention grasp
- abdominal slap
- facial slap
- dietary manipulation
- sleep deprivation

There were three more letters written after this memo approving (and in one case, extending) treatment with particular detainees: August 23, 2007, November 6, 2007, and November 7, 2007. But they appear to deal with sleep deprivation, not a new approval of walling. And yet in December 2008, Hayden said CIA was using walling.

It may be that the July 2007 memo was meaningless. After all, it relied on Bradbury's past memos (see footnote 2), including the May 10, 2005 one where Bradbury found walling to be legal. Moreover it was issued in conjunction with (though did not mention) Bush's Executive Order 13440, which asserted,

(b) I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:

[snip]

(iii) the interrogation practices are determined by the Director of the

Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee with whom they are used;

In other words, EO 13440 lets the CIA Director decide what torture techniques are legal. And so long as you're still clinging to the 2005 torture memos, Michael Hayden can decide that even waterboarding is legal. And Michael Hayden told the incoming Administration that walling was legal.

Notably, in Hayden's second attempt to convince the Obama Administration to use torture—roughly January 13, 2009—he appears to have suggested that Dianne Feinstein was mischaracterizing walling.

Hayden's advocacy of the interrogation program was just as fierce: it worked, and it was vital to America's national security, he said. Democrats had wildly mischaracterized the techniques, including California senator Dianne Feinstein, who, he said, made walling "sound like some kind of a WWF steel-cage death match," when in fact suspects wore neck braces to avoid getting whiplash.

There's some further story, I suspect, about why Hayden was pitching a technique that even Steven Bradbury hadn't included in approved techniques in July 2007.