

THE OLC MEMOS, “ERRONEOUS AND INFLAMMATORY ASSUMPTIONS,” AND JOHN RIZZO’S LIES

In his statement on the torture memos today, Obama suggested that some of the "assumptions" about what Americans had done were wrong, and that releasing the memos would correct these "assumptions."

First, the interrogation techniques described in these memos have already been widely reported. Second, the previous Administration publicly acknowledged portions of the program – and some of the practices – associated with these memos. Third, I have already ended the techniques described in the memos through an Executive Order. Therefore, withholding these memos would only serve to deny facts that have been in the public domain for some time. **This could contribute to an inaccurate accounting of the past, and fuel erroneous and inflammatory assumptions about actions taken by the United States.**[my emphasis]

This suggests (though weakly) that the OLC memos—and not other evidence—should be taken as authoritative on the events surrounding our interrogation program.

Though, on several counts, this is not true.

The most troubling example pertains to Abu Zubaydah’s mental state before he was tortured. John Yoo (writing under Jay Bybee’s name) goes to some lengths to establish Abu Zubaydah’s sanity. After five paragraphs that basically make Abu Zubaydah out to be a self-confident

stud, here's what Yoo says about AZ's psychological health.

According to your reports, Zubaydah does not have any pre-existing mental conditions or problems that would make him likely to suffer prolonged mental harm from your proposed interrogation methods. Through reading his diaries and interviewing him, you have found no history of "mood disturbance or other psychiatric pathology[,] "thought disorder[,] ... enduring mood or mental health problems." He is in fact "remarkably resilient and confident that he can overcome adversity." When he encounters stress or low mood, this appears to last only for a short time. He deals with stress by assessing its source, evaluating the coping resources available to him, and then taking action. Your assessment notes that he is "generally self-sufficient and relies on his understanding and application of religious and psychological principles, intelligence and discipline to avoid and overcome problems." Moreover, you have found that he has a "reliable and durable support system" in his faith, "the blessings of religious leaders, and camaraderie of like-minded mujahedin brothers." During detention, Zubaydah has managed his mood, remaining at most points "circumspect, calm, controlled., and deliberate." He has maintained this demeanor during aggressive interrogations and reductions in sleep. You describe that in an initial confrontational incident, Zubaydah showed signs of sympathetic nervous system arousal, which you think was possibly fear. Although this incident led him to disclose intelligence information, he was able to quickly regain his composure, his air of confidence, and his "strong resolve" not to reveal any information.

Nowhere else, significantly, does Yoo feel the need to quote so selectively and in such detail about what CIA Acting Counsel John Rizzo had represented to him.

Meanwhile, this is what Dan Coleman—an FBI guy with deep knowledge of al Qaeda—had to say about AZ in Ron Suskind's *One Percent Doctrine*:

Meanwhile, Dan Coleman and other knowledgeable members of the tribe of al Qaeda hunters at CIA were reading Zubaydah's top secret diary and shaking their heads.

"This guy is insane, certifiable, split personality," Coleman told a top official at FBI after a few days reviewing the Zubaydah haul.

Two different people reading the same diary. One cherry-picks from it to claim AZ exhibited no evidence of "mood disturbance," whereas another reads the same diary and concludes the guy is nuts.

I might give Yoo and Rizzo equal weight with Coleman in terms of who more credibly measured AZ's mental state. But the second time Yoo discusses AZ's mental state, there's a half paragraph redacted.

The mental health experts that you have consulted have indicated that the psychological impact of a course of conduct must be assessed with reference to the subject's psychological history and current mental health status. The healthier the individual, the less likely that the use of anyone procedure or set of procedures as a course of conduct will result in prolonged mental harm. A comprehensive psychological profile of Zubaydah has been created. In creating this profile, your personnel drew on direct interviews, Zubaydah's diaries, observation of Zubaydah since his capture, and information from other

sources such as other intelligence and press reports. [half paragraph redacted]

If I had to guess, that half-paragraph shows Yoo's response to the Coleman claims Yoo **had** to have known about—and those claims didn't stand to reason so they were redacted.

There are a number of other discrepancies where existing resources appear far more credible than the information that OLC used (either knowingly or not) on which to found their memos.

For example, there's the claim that detainees deprived of sleep are not—at the same time—being physically abused.

The shackling [to deprive of sleep] is used only as a passive means of keeping the detainee awake and, in both the tightness of the shackles and the positioning of the hands, is not intended to cause pain. A detainee, for example, will not be allowed to hang by his wrists.

[snip]

Because sleep deprivation does not involve physical pain and would not be expected to to cause extreme physical discomfort to the detainee, the extended duration of sleep deprivation ... is not a sufficient factor alone to constitute severe physical suffering.

The ICRC, on the other hand, reported that 10 of 14 high value detainees complained of being hung by their wrists.

Prolonged stress standing position, naked, held with the arms extended and chained above the head, as alleged by ten of the fourteen, for periods from two or three days continuously, and for up to two or three months intermittently, during which period toilet access was sometimes denied

resulting in allegations from four detainees that they had to defecate and urinate over themselves.

And here's how the ICRC described the sleep patterns of those shackled with their hands over their heads.

Although this position prevented most detainees from sleeping, three of the detainees stated that they did fall asleep once or more while shackled in this position. These include Mr Khaled Shaik Mohammed and Mr Bin Attash; the third did not wish his name to be transmitted to the authorities. When they did fall asleep held in this position, the whole weight of their bodies was effectively suspended from the shackled wrists, transmitting the strain through the arms to the shoulders.

I hate to say it, but the 10 high value detainees, each reporting the same treatment independently, are a lot more credible than Steven Bradbury repeating John Rizzo's empty assurances.

Which suggests that, rather than rebutting "erroneous and inflammatory assumptions," the real concern the release of these memos ought to raise is the misrepresentations CIA apparently made to DOJ. By no means do I mean to excuse John Yoo and Steven Bradbury for their "banality." But John Rizzo was lying. Blatantly. In his claims to OLC as he tried to get stuff approved.

Contrary to Obama's suggestion, these memos should **not** correct any assumptions we've made about the torture our government conducted in our name. Rather, they should make it crystal clear that John Rizzo lied repeatedly about what the CIA was doing.

By all means, let's make sure that Yoo and

Bradbury (and Judge Bybee) pay for their legal rationalizations. But let's include John Rizzo in there for producing the lies that abetted this legal abomination.