

# IF THE DETAINEE DIES, DOING SLEEP DEPRIVATION IS WRONG

✖ One of the most shocking quotes from the Senate Armed Services Committee torture report came from Jonathan Fredman, then the Counsel for CounterTerrorism Center at CIA, now working for the Director of National Intelligence, told some interrogators at Gitmo, "It is basically subject to perception. If the detainee dies you're doing it wrong." Fredman is reported to have said that on October 2, 2002. A month later, on November 1, 2002, the staff JAG for a Special Ops unit in Bagram judged there was a risk to participating in CIA interrogations; "we are at risk as we get more 'creative' and stray from standard interrogation techniques and procedures taught at DoD and DA schools and detailed in official interrogation manuals." A month after that, two prisoners at Bagram died as a result of torture; Habibullah on December 3 and Dilawar on December 9 or 10.

This is not news. Their deaths—particularly that of Dilawar—have received a good deal of attention. There was an extensive report on their treatment in the NYT. (And as Loo Hoo notes, Dilawar was the subject of Taxi to the Dark Side.)

What I did not know, though, is that the criminal report on their deaths found the use of stress positions and sleep deprivation, "combined with other mistreatment," to have "caused" or have been "direct contributing factors" in the two homicides. From the SASC report:

In December 2002, two detainees were killed while detained by CITF-180 at Bagram. Though the techniques do not appear to have been included in any written interrogation policy at Bagram, Army investigators concluded that **the**

use of stress positions and sleep deprivation combined with other mistreatment at the hands of Bagram personnel, caused or were direct contributing factors in the two homicides. 1174 In the wake of the deaths of Habibullah and Dilawar, CITF-180 and the SMU TF began developing written standard operating procedures (SOPs) for interrogations. [my emphasis]

This report was dated October 8, 2004.

Mind you, this is the best demonstration available that (as Jeff Kaye has explained) "sleep deprivation"—as described in the torture program—is never just sleep deprivation.

What this ... demonstrates is the proclivity of the CIA and other government torturing agencies to twist the meaning of words, and stuff into the nomenclature of one "technique" or procedures a veritable cornucopia of different torture methods. In this "enhanced interrogation" version of sleep deprivation, forced sleep deficit was combined, as we can see, with shackling, forced positions and forced standing, humiliation, manipulation of diet, sensory overload, and possibly other torture procedures.

Rather, "sleep deprivation" is the excuse for shackling prisoners, in the case of Dilawar, hanging him from the ceiling by his arms.

That October 8, 2004 criminal investigation report, then, was effectively an admission that the "sleep deprivation," as practiced, combined with other harsh treatment (in the case of Dilawar, extensive beatings to his legs while he was hanging from his arms), could kill.

Now look at that date once more: October 8, 2004, well before Stephen Bradbury published an OLC memo on May 10, 2005, approving the use of

sleep deprivation in combination with other harsh techniques. The memo, of course, makes no mention of the criminal investigation that concluded that sleep deprivation combined with other harsh techniques had killed two men. But the report sure seems to be in the background of everything Bradbury wrote in that memo, such as:

...the CIA has found that many of the at least 25 detainees subjected to sleep deprivation have tolerated it well. The general conditions in which sleep deprivation takes place would not change this conclusion. Shackling is employed as a passive means of keeping a detainee awake and is used in a way designed to prevent causing significant pain. A detainee is not allowed to hang by his wrists.

Except, of course, when they are, and such shackling from the wrists in the name of sleep deprivation causes death, huh Mr. Bradbury?

Now, aside from the fact that the memo seems designed to deny that criminal investigators had already found that "sleep deprivation" used in conjunction with other methods had killed two men, we have no way of proving that Bradbury saw the criminal report before he wrote the memo (or, for that matter, ever).

Yet it's worth looking at the timing and author of the long NYT story describing the treatment of Dilawar and Habibullah. The author, Tim Golden, is the same person who, the following year, published extensive details (from a leaked copy) of the memo Gordon England and Philip Zelikow wrote in June 2005 proposing more humane treatment of detainees. The story on the Bagram detainees also depended on leaked materials," a nearly 2,000-page confidential file of the Army's criminal investigation into the case" (which appears to be the report the Senate Armed Services Committee document cites. And the date? May 20, 2005, just days after Bradbury published his memo declaring sleep deprivation

combined with other harsh methods to be perfectly legal and safe.

While we can't be sure, the timing and the similar reporting circumstances suggest Golden's Bagram story may have been another attempt on the part of dissidents within the Administration to push back against Bradbury's "Combined Techniques" opinion. If so, it would suggest Bradbury knew or should have known about the conclusion of the investigation into Dilawar's death, yet repeatedly claimed that "sleep deprivation" combined with other harsh treatment does not severely harm detainees.

In any case, it explains one more reason why Jim Comey predicted we'd be ashamed once we saw that "combined techniques" memo.

*(The image, of Dilawar, was first published in the NYT article on his treatment.)*