

DID ABU ZUBAYDAH'S TORTURE BEGIN AFTER MAY 28, 2002?

I increasingly suspect that the torture index provided to ACLU may better pinpoint the day when Abu Zubaydah's torture began. Here are they key datapoints.

April 13, 2002: CIA starts taping Abu Zubaydah interrogations.

April 16, 2002: Bruce Jessen circulates draft exploitation plan to JPRA Commander.

April 2002: CIA OGC lawyers begin conversations with John Bellinger and John Yoo/Jay Bybee on proposed interrogation plan for Abu Zubaydah. Bellinger briefed Condi, Hadley, and Gonzales, as well as Ashcroft and Chertoff.

May 6, 2002: Interrogators send 28-page cable to HQ.

Mid-May 2002: CIA OGC lawyers meet with Ashcroft, Condi, Hadley, Bellinger, and Gonzales to discuss alternative interrogation methods, including waterboarding.

Mid to late May, 2002: Ali Soufan leaves Thailand after contractors threaten to confine Abu Zubaydah in small box.

May 28, 2002: CIA HQ sends 4 page cable to interrogators in Thailand.

Early June, 2002: Soufan's partner, Steve Gaudin, leaves Thailand.

July 13, 2002: CIA OGC (Rizzo?) meets with Bellinger, Yoo, Chertoff, Daniel Levin, and Gonzales for overview of interrogation plan.

July 17, 2002: Tenet met with Condi, who advised CIA could proceed with torture, subject to a determination of legality by OLC.

It appears that, as MadDog suggested, that that May 28, 2002 cable may have been the written approval for contractor James Mitchell to start using the harsher forms of torture.

Here's what I think happened.

First, it's clear that Mitchell's partner, Bruce Jessen, started circulating his exploitation plan at about the same time Mitchell took over the interrogation of AZ. It's equally clear that CIA's counsel (presumably John Rizzo) started working with OLC (presumably Yoo) on formulating legal advice at about the same time. So in mid-April, you've already got the intent to use SERE techniques in interrogation.

Ari Shapiro described a process by which Mitchell wrote cables every night to get the next day's torture approved by Alberto Gonzales.

The source says nearly every day, Mitchell would sit at his computer and write a top-secret cable to the CIA's counterterrorism center. Each day, Mitchell would request permission to use enhanced interrogation techniques on Zubaydah. The source says the CIA would then forward the request to the White House, where White House counsel Alberto Gonzales would sign off on the technique. That would provide the administration's legal blessing for Mitchell to increase the pressure on Zubaydah in the next interrogation.

But a 28 pages would cover far more than the next day (the other cables are generally 2 to 5 pages long). So I suspect Mitchell wrote in requesting a whole range of torture techniques. And this would be roughly in the time frame of when, according to Ali Soufan, Mitchell's team

took over AZ's interrogation for good, after some back and forth with the FBI being more involved.

So Mitchell sends his 28-page cable, CIA briefs Condi and others on the techniques they want to use—including waterboarding. And at the end of May, a 4-page cable comes back to Mitchell in Thailand.

Either just before or just after, the interrogators bring out the small box for Zubaydah, and Soufan leaves. (I'm inclined to believe that Soufan left later than the mid-May described by the DOJ IG report, which suggests he may well have left after that 4-page cable came back, which would mean the appearance of the small box was a response to the cable.)

Of course, if CIA HQ had an approval of significant torture methods by May 28, it means all the rest—the two months of negotiations with OLC to get an opinion approving torture—were just kabuki. But that's what one of Shapiro's sources is beginning to wonder.

"I can't believe the CIA would have settled for a piece of paper from the counsel to the president," says one former government official familiar with those discussions.

"If that were true," says the former official, "then the whole legal and policy review process from April through August would have been a complete charade."

Consider this. CIA went to Congress after it had tortured and basically said it hadn't started the torture yet and implied, then, that it was giving prospective notice. Is it possible that the negotiations with Condi and Bellinger were similar? After all, we have reason to believe Cheney and friends lied to Condi's people much later in the debate, about what approval this had in Congress (as they intended to lie to John Ashcroft in the hospital room on March 10,

2004). Is it possible that when Bellinger and Condi asked for an OLC opinion, the CIA's torturers were already hard at work, and it's only because Bellinger asked for an opinion that they even bothered? If Gonzales was relaying daily approvals for torture directly to the torturers in the field, then why would it appear that Condi was the one who "approved" the program in mid-July? Why not Gonzales?

Obviously none of this should be surprising. But the May 28 document may well indicate whether or not the kabuki was kabuki even for some within the Administration.