

REPOSTED: THE CIA IG REPORT'S "OTHER" CONTENTS

(Today is CIA IG Report day. While we wait, I'm re-posting two posts I did in June describing what we already know is in the report.)

In this post, I reviewed the known contents of the CIA IG Report's 6-page section on torture for those who seem to forget we've seen substantive bits from that in the Bradbury memos. In this post, I'll look at what else shows up in the Bradbury memos. In a follow-up post, I'll look at what IG Report contents we haven't seen (and therefore are all but guaranteed not to see).

From what we can reconstruct, the report appears to include the following:

- Intro and summary
- A history of CIA's involvement in torture
- A description of the development of the torture techniques as if they were developed for use for Abu Zubaydah
- A review of the legal authorization for the program, with the critique that doctors were not involved in the pre-authorization review and, probably, a description of the ways that torture as practiced exceeded the guidelines included in Bybee Two

- An erroneous claim that everyone who should have been briefed was briefed
- Apparently a general review of how the program was implemented, including a description of the close involvement of medical personnel, and a description of what was done to which High Value Detainees
- A description of the decision to videotape and apparent reviews of what a review of the videotapes and cables revealed about whether the torture was what it was claimed to be
- Forty pages of completely redacted material
- The Effectiveness section
- A policy section that notes that the program includes many of the same techniques as the State Department qualifies as abusive
- Three pages of recommendations
- A number of Appendices—the CIA appears to be hiding the very existence of about five of these and most of the contents of the rest of them

While I couldn't begin to guess what that 40 page completely redacted section includes, the stuff that has been made available show the IG was concerned about waterboarding (for a variety

of reasons), believed the program to constitute the same kind of abuses the State Department condemned, and believed the approval process for the torture techniques (the Bybee Two memo) was inadequate.

Read the rest of the entry to see the more specific details of the program.

This post takes the Table of Contents of the IG Report and inserts known details into the section they appear (bold titles are first level headings, italics are second level headings, and underline are third level headings). It puts the references to the IG Report from the May 10, 2005 Techniques memo and May 30, 2005 CAT memo into the proper section; to see where these references occur in the Bradbury memos, see this post. As noted below, I have not replicated my discussion of what appears in the Effectiveness section from this post. The quotes below are, with one exception from the report itself as noted, Bradbury's (with his direct citations of the report in quotation marks).

Introduction (1)

Summary (2)

The IG Report noted that in some cases the waterboard was used with far greater frequency than initially indicated. (5)

Background (9)

CIA interrogation practice appears to have varied over time. The IG Report explains that the CIA "has had intermittent involvement in the interrogation of individuals whose interests are opposed to the United States." IG Report at 9. In the early 1980s, for example, the CIA initiated the Human Resource Exploitation ("HRE") training program, "designed to train foreign liaison services on

interrogation techniques." Id. The CIA terminated the HRE program in 1986 because of allegations of human rights abuses in Latin America. See id at 10. [The passage on CIA's past use of torture goes on at some length, but is redacted.]

Discussion (11)

Genesis of post-9/11 Agency Detention and Interrogation Activities (11)

The Capture of Abu Zubaydah and Development of EITs (12)

Upon his capture on March 27, 2002, Zubaydah became the most senior member of al-Qaeda in United States custody.(12)

These techniques have all been imported from military Survival, Evasion, Resistance, Escape ("SERE" training, where they have been used for years on U.S. military personnel, although with some significant differences described below. (13-14)

As noted in the IG Report, "[a]ccording to individuals with authoritative knowledge of the SERE program, ... [e]xcept for Navy SERE training, use of the waterboard was discontinued because of its dramatic effect on the students who were subjects." IG Report at 14 n14.

The IG Report noted that in some cases the waterboard ... was used in a different manner [than originally indicated]. (14 n14; brackets mine)

In most applications of [the waterboard], including as it is used in SERE training, it appears that the individual undergoing the technique is not in fact completely prevented from breathing, but his airflow is restricted by the wet cloth, creating a sensation

of drowning. See IG Report at 15. ("Airflow is restricted ... and the technique produces the sensation of drowning and suffocation.") (brackets mine, parenthesis Bradbury's; Bradbury goes on to note that after the IG Report, the CIA imposed new constraints on waterboarding)

The IG Report described the maximum allowable period of sleep deprivation at that time as 264 hours or 11 days. See IG Report at 15. (Bradbury goes on to state that after the IG Report, the CIA imposed new limits on sleep deprivation)

DOJ Legal Analysis (16)

Pages 16 through 19 are available largely unredacted here. Pages 16 through 18 consist of a general review of CAT and US 2340(a). Page 19 discusses the Bybee One memo. Page 20 introduces a discussion of the Bybee Two memo, after which the rest of the page is redacted.

We note that this involvement of medical personnel in designing safeguards for, and in monitoring implementation of, the procedures is a significant difference from earlier uses of the techniques catalogued in the Inspector General's Report. See IG Report at 21 n26 ("OMS was neither consulted nor involved in the analysis of the risk and benefits of [enhanced interrogation techniques], nor provided with the OTS report cited in the OLC opinion [the Interrogation Memorandum].").

The Inspector General further reported that "OMS contends that the expertise of the SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant. Consequently, according to OMS, there was no a priori reason to believe that applying the waterboard with the

frequency and intensity with which it was used by the psychologist/interrogators was either efficacious or medically safe." Id at 21 n26.

Notice to and Consultation with Executive and Congressional Officials (23)

Page 23 of the report includes the following passage:

The DCI briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs. [note, this quote is from the report itself, not Bradbury's memos]

[Long redacted section]

"Medical and, as appropriate, psychological personnel shall be physically present at, or reasonably available to, each Detention Facility. Medical personnel shall check the physical condition of each detainee at intervals appropriate to the circumstances and shall keep appropriate records." (28-29)

Medical and psychological personnel are on-scene throughout (and, as detailed below, physically present or otherwise observing during the application of many techniques, including all techniques involving physical contact with detainees) and "[d]aily physical and psychological evaluations are continued through the period of [enhanced interrogation technique] use." [brackets Bradbury's] (30)

The CIA used the waterboard extensively

in the interrogations of KSM and Zubaydah, but did so only after it became clear that standard interrogation techniques were not working. Interrogators used enhanced techniques in the interrogation of al-Nashiri with notable results as early as the first day. See IG Report at 35-36. Twelve days into the interrogation, the CIA subjected al-Nashiri to one session of the waterboard during which water was applied two times. See *id.* at 36. (Note this section immediately precedes the discussion of videotapes.)

Videotapes of Interrogations (in the middle of long redacted section, 36)

The IG Report noted that in some cases the waterboard ... was used in a different manner [than originally indicated]. See *id.* at 37 ("[T]he waterboard technique ... was different from the technique described in the DoJ opinion and used in the SERE training. The difference was the manner in which the detainee's breathing was obstructed. At the SERE school and in the DoJ opinion, the subject's airflow is disrupted by the firm application of a damp cloth over the air passages; the interrogator applies a small amount of water to the cloth in a controlled manner. By contrast, the Agency Interrogator ... applied large volumes of water to a cloth that covered the detainee's mouth and nose. One of the psychologists/interrogators acknowledged that the Agency's use of the technique is different from that used in SERE training because it is "for real—and is more poignant and convincing.")

Waterboard Technique (in the middle of long redacted section, 44, the passage begins with a reference to the waterboarding of KSM)

The IG Report noted that in some cases the waterboard was used with far greater frequency than initially indicated. (44, 46)

This is not to say that the interrogation program has worked perfectly. According to the *IG Report*, the CIA, at least initially, could not always distinguish detainees who had information but were successfully resisting interrogation from those who did not actually have the information. See *IG report* at 83-85. On at least one occasion, this may have resulted in what might be deemed in retrospect to have been the unnecessary use of enhanced techniques. On that occasion, although the on-scene interrogation team judged Zubaydah to be compliant, elements with CIA Headquarters still believed he was withholding information. [Redaction of more than one full line] See *id*, at 84. At the direction of CIA Headquarters interrogators, therefore used the waterboard one more time on Zubaydah. [Redaction of ~3/4 of a line] See *id*, at 84-85.

This example, however, does not show CIA "conduct [that is] intended to injure in some way unjustifiable by any government interest," or "deliberate indifference" to the possibility of such unjustifiable injure. *Lewis*, 523 U.S. at 849. As long as the CIA reasonably believed that Zubaydah continued to withhold sufficiently important information, use of the waterboard was supported by the Government's interest in protecting the Nation from subsequent terrorist attacks. The existence of a reasonable, good faith belief is not negated because the factual predicates for that belief are subsequently determined to be false. Moreover, in the Zubaydah example, CIA Headquarters dispatched officials to

observe the last waterboard session. These officials reported that enhanced techniques were no longer needed. See IG Report at 85. Thus the CIA did not simply rely on what appeared to be credible intelligence but rather ceased using enhanced techniques despite this intelligence.

Effectiveness (85)

See this post and this post. Note, too, the unredacted discussion in the report—at least two of the six pages in this section pertain to waterboarding.

Policy Considerations and Concerns Regarding the Detention and Interrogation Program (91)

Policy Considerations (92)

Pages 92, 93, and half of 94 are unredacted in the report. They include a description of the Senate reservation on CAT. It notes the Senate's use of the 5th, 8th, and 14th Amendments to fulfill the "cruel, inhuman, or degrading" requirement of CAT, but notes that CAT does not have a "no exceptions" clause as it does for the torture requirement. These passages then review State Department reports condemning similar practices to those used in the torture program, including hooding, making detainees lie on the floor, and stress positions.

[One redacted subsection—must be "concerns regarding the program"—though the section must be no more than one page]

Endgame (95)

Conclusions (100)

The IG Report noted that in some cases the waterboard was used with far greater frequency than initially indicated.
(103-04)

Recommendations (106)

Appendices (no page numbers)

A. Procedures and Resources

This one-page appendix describes is partly unredacted in the report, and consists of the procedures used for the review.

B. Chronology of Significant Events

[All other Appendices redacted; the report shows the existence of four more appendices, including one section on acceptable techniques, but appears to hide around 6 more appendices, which must be those of greatest length]