THE LEAD UP TO BYBEE

I want to return back to the analysis of the OLC-related Vaughn Index from last week. I'd like to fill in the timeline leading up to the issuance of the Bybee Memos and identify as nearly as possible which documents were exchanged with CIA. The timeline is below, but for now, some observations:

- There is nothing in the two-week process leading up to the release of the Bybee Memos that appears to contribute to the Bybee One memo—the one authorizing the program in the abstract. Rather, the two week process appears to consist of negotiations over the Bybee Two memo—the one authorizing waterboarding and other torture, as there are several documents exchanged during that period known to contribute to that memo.
- Note the mix of faxed memos and memos with no apparent cover sheets (suggesting they may have been hand carried). Particularly given that the July 13 memo from Yoo to Rizzo is one of the ones without a cover sheet, I wonder whether the non-faxed letters were sent exclusively between Yoo and Rizzo, whereas the faxed

documents were shared with Bybee and others at OLC (but that's just a wildarsed guess).

- Note the one memo—on July 19, 2002—which the CIA claims was written in anticipation of litigation. It's interesting this one has that declaration whereas the others don't.
- CIA claims the Abu Zubaydah psychological profile was a draft. Is there a final somewhere? Or do they just call it a draft because they were not sure it made Abu Zubaydah look fit for torture yet?
- There are still a lot of questions about which DOD documents were forwarded by CIA to the DoJ. It appears likely that the missing document is the first packet of information from JPRA, which is not that inflammatory (though I wonder if it described these techniques as torture?). It also appears that DOD or CIA took apart the July 26 memo from JPRA and sent it to DOJ in parts; that's important because it appears they left off the 2-page JPRA document referring to these

techniques as torture.

July 13, 2002: Rizzo meets with Bellinger, Yoo, Chertoff, Daniel Levin, and Gonzales for overview of interrogation plan. Yoo writes initial okay for torture.

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

July 19, 200: A CIA lawyer faxes a nine-page (plus cover sheet) draft memo to an OLC attorney. It discusses proposed interrogation techniques, medical information, and operational intelligence. **CIA claims the document was written "in anticipation of litigation."**

Late July 2002: Bybee discusses SERE with Yoo and Ashcroft.

July 24, 2002: Four things happen on this day:

- A CIA Attorney writes (apparently does not fax) an OLC lawyer a 2-page memo discussing certain proposed interrogation techniques, medical information, and operational intelligence. (CIA does not claim this document was written in anticipation of litigation.)
- Date of Abu Zubaydah's psychological profile—which **CIA considers a draft**. Presumably on the basis of the psychological profile being a draft, CIA claims parts of the memos can be withheld because they are

"predecisional."

- A CIA attorney faxes an OLC attorney an 11-page (plus cover sheet) memo regarding legal analysis of the CIA's rendition, detention, and interrogation program. (CIA does not claim this document was written in anticipation of litigation.)
- OLC orally advises CIA that proposed techniques are legal.

July 25, 2002: Three events happen on this day:

- DOD's OGC asks JPRA for "a list of exploitation and interrogation techniques that had been effective against Americans."
- Before getting that response, DOD's OGC asks for "a list of techniques used by JPRA at SERE school."
- In response to the first request, JPRA hand carries a memo with lesson plans on exploitation; the memo has 6 attachments (see pages 208 to 209).
- Date of DOD document (almost certainly from JPRA to DOD's General Counsel)—of either 46- or 59-pages long, providing legal advice. This document was in OLC custody in 2007, but it could not be

located this year.

July 26, 2002: Three things happen on this day:

- In response to the second DOD OGC request on July 25, JPRA sends memo with three attachments:
  - Physical Pressures used in Resistance Training and Against American Prisoners and Detainees (see pages 211 to 214)
  - Operational Issues Pertaining to the use of Physical/Psychological Coercion in Interrogation (2 pages)
  - A memo from Jerrold Ogrisseg, "Psychological Effects of Resistance Training (2 pages; see pages 215 to 216; note, this is dated July 24)
- CIA apparently sends a 12-page (plus fax cover sheet) memo to DOJ [the Vaughn Index says the fax cover sheet was from CIA to DOD, but lists From/To as CIA to DOJ]. The memo is a DOD document discussing resistance training techniques to special

designated high-risk-of-capture personnel.
- OLC orally tells CIA proposed techniques (presumably including waterboarding) are legal.

July 31, 2002: Two similar (but apparently not identical) memos are sent on this date:

- CIA writes (but apparently doesn't fax) a two page memo to DOJ responding to DOJ's inquiry about the physiological effects of a proposed interrogation technique in connection with the preparation of legal advice by OLC.
- CIA faxes a two-page (plus fax cover sheet) memo to DOJ responding to DOJ's inquiry about the physiological effects of a proposed interrogation technique in connection with the preparation of legal advice by OLC.

August 1, 2002: "Bybee Memos" completed.

- Bybee One (50 pages) describes torture as that which is equivalent to the pain accompanying serious physical injury, "such as organ failure, impairment of bodily function, or even death."

- Bybee Two (18 pages) describes and approves of ten interrogation techniques to be used with Abu Zubaydah. Relies on Abu Zubaydah psychological profile, JPRA techniques, Ogrisseg memo.