

# ON TWO TORTURE INVESTIGATIONS



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Across the pond—in the investigation of British complicity with the torture of Binyam Mohamed and others—the Supreme Court has told the government it can't present secret evidence.

The supreme court has outlawed the use of secret evidence in court by the intelligence services to conceal allegations that detainees were tortured.

The decision will be seen as a significant victory for open justice, but the panel of nine judges pointed out that parliament could change the law to permit such "closed material procedures" in future.

The appeal was brought by lawyers for MI5 seeking to overturn an earlier appeal court ruling that prevented the service from suppressing accusations British suspects had been ill-treated at Guantánamo Bay and other foreign holding centres.

And here in the land where such secrets have become the norm, Apuzzo and Goldman reveal one of the reasons why DOJ is taking a closer look at Manadel al-Jamadi's death: because the CIA guy in charge of an unofficial interrogation program in Iraq went beyond clear directions from HQ.

Steve Stormoen, who is now retired from the CIA, supervised an unofficial program in which the CIA imprisoned and interrogated men without entering their names in the Army's books.

The so-called “ghosting” program was unsanctioned by CIA headquarters. In fact, in early 2003, CIA lawyers expressly prohibited the agency from running its own interrogations, current and former intelligence officials said. The lawyers said agency officers could be present during military interrogations and add their expertise but, under the laws of war, the military must always have the lead.

This detail is interesting for another reason. The AP notes that Stormoen asked to use torture tactics.

Tactics such as waterboarding and sleep deprivation, which the CIA used in other overseas prisons, were prohibited at Abu Ghraib without prior approval. In videoconferences with headquarters, Stormoen and other officers in Iraq repeatedly asked for permission to use harsher techniques, but that permission was never granted, one former senior intelligence official recalled.

This would have put Stormoen in Iraq asking to use things like waterboarding not long after someone in OVP suggested waterboarding a different detainee, Muhammed Khudayr al-Dulaymi.

At the end of April 2003, not long after the fall of Baghdad, U.S. forces captured an Iraqi who Bush White House officials suspected might provide information of a relationship between al Qaeda and Saddam Hussein’s regime. Muhammed Khudayr al-Dulaymi was the head of the M-14 section of Mukhabarat, one of Saddam’s secret police organizations. His responsibilities included chemical weapons and contacts with terrorist groups.

[snip]

Duelfer says he heard from "some in Washington at very senior levels (not in the CIA)," who thought Khudayr's interrogation had been "too gentle" and suggested another route, one that they believed has proven effective elsewhere. "They asked if enhanced measures, such as waterboarding, should be used," Duelfer writes. "The executive authorities addressing those measures made clear that such techniques could legally be applied only to terrorism cases, and our debriefings were not as yet terrorism-related. The debriefings were just debriefings, even for this creature."

Duelfer will not disclose who in Washington had proposed the use of waterboarding, saying only: "The language I can use is what has been cleared." In fact, two senior U.S. intelligence officials at the time tell The Daily Beast that the suggestion to waterboard came from the Office of Vice President Cheney.

Now, I have always imagined that Cheney tried to order up military interrogators to waterboard Khudayr; OVP wasn't exactly getting along with the CIA in 2003. But you do have to wonder why Stormoen ignored HQ's directions on torture.