

BOXES AND BURIALS IN THE CIA'S TORTURE PLANS

In this post, I'm going to test a hypothesis that OLC may not have included "cramped confinement" in its torture plans until it removed "mock burial." If I'm right, it means after having been told OLC would not approve mock burial, OLC and CIA instead just renamed what they were doing as "cramped confinement" so as to get it past those in DOJ who were opposed to allowing the US to use mock burial in its torture program.

This is a weedy post even by my standards. But the key points are:

- Many of the discussions about which techniques OLC was approving appear to have taken place orally, not in written form
- The one written document we know exists—a JPRA Physical Pressures document—was an attempt made during the key three days of the Bybee Memo process to pretend that JPRA sanctioned waterboarding (at least) as it either already had been used or would be used on Abu Zubaydah, rather than as the Navy used it in training
- The section on small box confinement also seems to have been created in response to this process,

meaning it is possible that JPRA adjusted both the name and the description of the technique to provide JPRA sanction for mock burial as it had been done on AZ

The OPR Report's list of torture techniques is neither the original nor the final list of planned torture techniques

The OPR Report includes a list of torture techniques Mitchell and Jessen proposed to use with Abu Zubaydah that includes both cramped confinement and mock burial, which seems to suggest that the CIA tried to get both approved at once. But the OPR Report provides absolutely no explanation for the source or the date of its list (on PDF 41) of the torture techniques. It says simply:

The CIA psychologists eventually proposed the following twelve EITs to be used in the interrogation of Abu Zubaydah:

In addition to the use of the word "eventually" in this description, there's further evidence this list is not the first incarnation of the torture techniques requested. That's because this description of sleep deprivation...

Sleep deprivation: The subject is prevented from sleeping, not to exceed 11 days at a time;

Includes this footnote:

As initially proposed, sleep deprivation was to be induced by shackling the subject in a standing position, with his feet chained to a ring in the floor and his arms attached to a bar at head level, with very little room for movement.

Compare that with the description of sleep deprivation as it appears in the Bybee Two memo.

Sleep deprivation may be used. You have indicated that your purpose in using this technique is to reduce the individual's ability to think on his feet and, through the discomfort associated with lack of sleep, to motivate him to cooperate. The effect of sleep deprivation will generally remit after one or two nights of uninterrupted sleep. You have informed us that your research has revealed that, in rare instances, some individuals who are already predisposed to psychological problems may experience abnormal reactions to sleep deprivation. Even in those cases, however, reactions abate after the individual is permitted to sleep. Moreover, personnel with medical training are available to and will intervene in the unlikely event of an abnormal reaction. You have orally informed us that you would not deprive Zubaydah of sleep for more than eleven days at a time and that you have previously kept him awake for 72 hours, from which no mental or physical harm resulted. [my emphasis]

The description in the OPR Report for this torture technique, at least, matches what appears in the Bybee Two memo.

Also note the admission (which I had never noticed before) that CIA had already subjected AZ to sleep deprivation but don't worry, AZ was A-Okay as a result.

you have previously kept him awake for 72 hours

Though their admission to 72 hour sessions of sleep deprivation doesn't accord with AZ's memory of his first several weeks in the black

site, which describe being kept awake for weeks at a time (perhaps 11 days?), using the shackling technique that OLC would go on to eliminate from their description of sleep deprivation:

I was transferred to a chair where I was kept, shackled by hands and feet for what I think was the next 2 to 3 weeks.

[snip]

I could not sleep at all for the first two to three weeks. If I started to fall asleep one of the guards would come and spray water on my face.

From all this we can make several educated assumptions about the list included in the OPR Report. First, it includes the torture techniques as ultimately incorporated in the torture memos; this is not the list that CIA first brought to OLC. Moreover, we know that the description of sleep deprivation, at least, was watered down to hide the most appalling aspects of the technique that, even though they weren't described, had already taken place.

Oh, and they were probably lying about the one detail they admitted to, how long they had subjected AZ to sleep deprivation.

But we already knew that.

That said, we know the OPR Report's list isn't the final list, either. The OPR Report list still shows, in unredacted form, diapering as a technique. We have no idea when or why that we eliminated from the list. And we know the redacted 12th technique is mock burial, which was eliminated some time after July 24, 2002, though we don't know when, specifically, that happened. Note that the description of that 12th technique—mock burial—continues onto PDF page 43, so the description of it may include more detail on how it was eliminated from the list.

In other words, at best, this is an interim list. The list may simply reflect the final form

that each torture technique request had before it was either incorporated into the Bybee Two memo or eliminated from the list.

There was never a written list including these techniques in this form

Moreover, the techniques memo shows that there was never a written list showing all these techniques described in this form. That's because the Bybee Two memo makes it clear that a number of details in it were communicated to DOJ only orally. These include:

- Although some of these techniques may be used with more than once, that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions
- The false wall [used in walling] is in part constructed to create a loud sound when the individual hits it, which will further shock or surprise in [sic] the individual
- Through observing Zubaydah in captivity, you have noted that he appears to be quite flexible despite his wound
- You would not deprive Zubaydah of sleep for more than eleven days at a time and you have previously kept him awake for 72 hours, from which no mental or physical harm resulted

- You would in fact place a harmless insect such as a caterpillar in the box with him [additional redacted information may be part of the oral information—see below on allergies]
- Waterboarding triggers an automatic physiological sensation of drowning that the individual cannot control even though he may be aware that he is in fact not drowning and it is likely that this procedure would not last more than 20 minutes in any one application
- No stress position will be used that could interfere with the healing of Zubaydah's wound
- Despite his wound, Zubaydah remains quite flexible, which would substantially reduce any pain associated with being placed in the box

Some of this oral information pertains directly to efforts DOJ made to document that the torture would not hurt AZ, specifically. For example, the email in which Yoo asked Koester whether "Boo boo" was allergic to insects seems to show how Yoo and Koester used oral conversations to address concerns about techniques used particularly on AZ.

On July 30, 2002, Yoo asked [Koester] by email, "[D]o we know if Boo boo is allergic to certain insects?"[Koester]

responded,"No idea, but I'll check with [redacted]. Although there is no record of a reply by [redacted] the final version of the Classified Bybee Memo included the following statement:
"Further, you have informed us that you are not aware that Zubaydah has any allergies to insects."

[Note, that sentence about insect allergies is redacted in the unclassified memo.]

And several of the other details pertain to his wounds and his flexibility.

But for waterboarding and sleep deprivation, the oral information includes some of the few limits placed on the techniques as generic techniques. Nowhere, the Bybee Two memo suggests, had CIA committed by this point in writing to the limit of 11 days of straight sleep deprivation.

Now you might say the extent of oral information in the memo makes sense. After all, CIA only requested a written document on either July 24th or the 26, just days before the White House demanded the completion of the memo. You could argue that things were so frantic that they just worked orally after that decision got made. Whether that excuse makes sense or not, it still is a testament to the fact that OLC did not have a final list of torture techniques either before or after the decision to get a letter listing all of them.

Jim Haynes very urgently and specifically had JPRA provide CIA a document on Physical Pressures

The evidence there was no one written document encompassing all the details of the torture techniques that made it into the Bybee Two memo is all the odder given that we know CIA sent and OLC received at least one list of torture techniques. The SASC Report describes how, during the same frantic three days when CIA backed off its request for mock burial to be approved and asked for a written list of all the

torture techniques, JPRA (the entity that administers SERE) was experiencing equally frantic days responding to requests for information from DOD's General Counsel, Jim Haynes.

Here is how those two frantic chronologies intersect—though there is a great deal of uncertainty about the order of many of those events.

July 24, 2002

By telephone, Yoo orally approves attention grasp, walling, facial hold, cramped confinement, and wall standing and tells Rizzo DOJ is looking for more data

Some time thereafter, Yoo tells Rizzo that approval will take longer if mock burial was included

Several conversations between DOD General Counsel Jim Haynes and DOD Deputy General Counsel for Intelligence Richard Shiffrin

Psychological Effects of Resistance Training (letter from Jerald Ogrisseg) drafted

Date of AZ psychological profile cover sheet addressed to Yoo

Koester writes another OLC attorney asking about protocol for working on a classified laptop computer

July 25, 2002

Shiffrin requests information on exploitation from JPRA Chief of Staff Daniel Baumgartner

Baumgartner responds with a memo and several attachments "within hours"—memo dated July 25

Prior to receiving July 25 memo, Shiffrin (or Haynes) requests additional

information, including list of techniques used at SERE

July 25 First memo delivered to Shiffrin by JPRA employee

Baumgartner and Haynes meet personally; Haynes requests more information (see [this post](#) for more background)

[Possibly] Operational Issues Pertaining to Use of Physical/Psychological Coercion drafted

5:04 PM CIA faxes AZ psychological profile

July 26, 2002

JPRA completes second memo, Exploitation and Physical Pressures, with three attachments

[Possibly] Physical Pressures Used in Resistance Training drafted

Baumgartner sends second memo to CIA attorney

Koester receives 3 memos from DOD: Ogrisseg letter, Physical Pressures memo, and memo on techniques used against US POWs

[Probably] Koester tells Yoo that CIA wants written approval rather than just oral approval

The story we are told is that on July 24, Yoo gives Rizzo oral approval of the least controversial techniques including (the OPR report says) cramped confinement. Also in that conversation, Yoo asks for more information, which seems to set off the document flurry to follow. At some point—perhaps in that same discussion—Yoo tells Rizzo that approving mock burial might take more time. And then sometime in that timeframe (the OPR suggests it is both July 24 and July 26), CIA asks DOJ for a written techniques memo—which would lead to the

production of the Bybee Two memo over the next six to eight days.

While that's the general outline of what happened, the timing is unclear. And the dates on the documents don't help us clarify that mess: Ogrisseg's memo (see PDF 215) is clearly dated July 24, but it is reportedly part of the July 26 memo to Haynes, not the July 25 one. The cover sheet of the AZ psychological profile reads July 24 (and lacks a fax timestamp), but the profile itself has a fax timestamp showing it was sent at the end of the day on the 25th. The Operational Issues memo appears to be dated July 25, though SASC describes it as undated in footnote 198. The excerpts of the Physical Pressures memo included in the SASC backup (starting at PDF 211) lack a date, though footnote 192 of SASC may suggest it did bear the date of July 26.

And it's not clear whether we see the report OPR says Koester got on "information about interrogation techniques used against United States prisoners of war." Moulton's email in footnote 179 definitely records a request for "information about resistance techniques used against U.S. POWs." The title, "Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees" leaves it unclear whether this is that POW document or not.

But what seems to have happened is that at the moment when Yoo asked Rizzo for more information, when CIA asked DOJ for a written document rather than just oral approvals, and when Yoo encouraged Rizzo to drop mock burial, Haynes had a face to face meeting with JPRA and very urgently clarified exactly what he was looking for in a list of torture techniques.

The Physical Pressures document appears to be at least one response to Haynes' urgent demand.

The Physical Pressures document isn't the template for all the torture methods

The simplest explanation for Haynes' urgent

request that JPRA send over a list of torture techniques would be CIA's decision to ask for written approval at the last minute. After all, getting a list of torture techniques from JPRA would allow Koester to just cut and paste torture technique descriptions from the JPRA document into the OLC memo.

But that's not what happened.

To begin with, the Physical Pressures don't match the torture techniques that made it in the Bybee Two memo. It includes a bunch of extra techniques—things like abdomen slap and water flicking that would later be used by the CIA. Both waterboarding and small box confinement appear only in the "Other Services" section. And sleep deprivation is referred to as an "Other Tactic." More importantly, the JPRA list also lacks two of the techniques included in the Bybee Two memo, the use of insects, and wall standing (which was a favored torture technique in Northern Ireland).

And while some of the descriptions in this document are reasonably close to the descriptions that end up in the Bybee Two memo, others are not. Attention grasp, walling, and facial hold are close matches. The Bybee Two facial slap description lacks JPRA's limits on application number. The specific stress positions described are slightly different. Sleep deprivation, in the Bybee Memo, includes more controls than what is described in the JPRA document.

The Physical Pressures document was created specifically to falsely claim the torture as used on AZ matched techniques practiced by JPRA

Then there's waterboarding. As I reported last year, the waterboarding described in this JPRA document doesn't match the waterboarding described in the Bybee Memo, in a number of really important ways. Notably, the waterboarding described in this document matches the waterboarding as the CIA Inspector General described it in the abusive way it was applied.

But this JPRA document not only differs from what appeared in the Bybee Two memo and matches what was done in practice; this JPRA memo also differs from what was done in Navy SERE training, the only service that still used waterboarding at this point in time!

JPRA's description of the waterboarding technique provided in that first attachment was inconsistent in key respects from the U.S. Navy SERE school's description of waterboarding. According to the Navy SERE school's operating instructions, for example, while administering the technique, the Navy limited the amount of water poured on a student's face to two pints. However, the JPRA attachment said that "up to 1.5 gallons of water" may be poured onto a "subject's face." While the Navy's operating instructions dictated that "[n]o effort will be made to direct the stream of water into the student's nostrils or mouth," the description provided by JPRA contained no such limitation for subjects of the technique. While the Navy limited the use of the cloth on a student's face to twenty seconds, the JPRA's description said only that the cloth should remain in place for a "short period of time." And while the Navy restricted anyone from placing pressure on the chest or stomach during the administration of this technique, JPRA's description included no such limitation for subjects of the technique.

Think about what this means: Jim Haynes had an urgent face to face with those at JPRA amenable to adapting their program to being adapted as torture. And in response to requests he made at that meeting, rather than giving him a list of torture techniques as practiced by SERE schools (at least in the case of waterboarding), they gave him a document that put the JPRA seal of

approval on torture as it was being used with Abu Zubaydah. The urgency behind Haynes' demands from JPRA, it seems, was about being able to claim that the outright torture being inflicted on AZ was not torture because it was used in SERE. Only, it wasn't waterboarding as practiced by even the only SERE school still using waterboarding.

That's what the urgency seems to have been about: being able to claim that waterboarding (as Haynes knew it had already been practiced) was okay because it matched what was done in SERE training. Only it didn't.

Before we get to cramped confinement, consider what this proves about the document as a whole:

- The JPRA document could not be an existing document describing SERE techniques as they were practiced
- At least in the case of waterboarding, it could not consist of descriptions of techniques simply cut and pasted from existing JPRA documents
- It either means it was designed to describe torture that had already happened, or it is evidence the torturers planned to exceed the limits place in the Bybee Two memo

Whether or not this document really did bear a creation date of July 26, 2002, it's clear that it was created on that date especially for Haynes and ultimately for Yoo in response to the frenzy going on over at DOJ.

What does this mean for mock burial and/or cramped confinement?

As a threshold matter, as with waterboarding, the description of cramped confinement in the Bybee Two memo does not match the description that appears in the JPRA document. Here's what Bybee Two describes:

Cramped confinement involves the placement of the individual in a confined space, the dimensions of which restrict the individual's movement. The confined space is usually dark. The duration of confinement varies based upon the size of the container. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space can last up to eighteen hours; for the smaller space, confinement lasts for no more than two hours.

Here's what the JPRA document describes:

CRAMPED CONFINEMENT ("the little box"): This is administered by placing a subject into a small box in a kneeling position with legs crossed at the ankle and having him learn [sic-SASC] forward to allow the door to be closed without exerting pressure on the back. Time and temperatures is [sic-MW] closely monitored (typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).

The description in the JPRA document only envisions small box-coffin-confinement. It does not envision the detainee being able to sit, but instead describes a painful fetal position. And the JPRA document reveals the necessity of worrying about the temperature inside the box.

As with the waterboard description, the JPRA cramped confinement describes the torture as it was used with AZ:

I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough to even sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. I don't know how long I remained in the small box, I think I may have slept or maybe fainted.

AZ makes clear—he could not sit in the coffin-shaped box, but instead had to crouch in a fetal position. And the only way for temperature to be a problem—as it was for AZ—is if the box is covered in such a way as to prevent all airflow.

As it would be in mock burial.

And while I'm going to have to do some more research on whether this technique, like the waterboard, differs from the way it was used in whatever SERE school still practiced it (note that, like waterboarding, small box confinement was not an approved JPRA technique), there is one piece of evidence that this description, like the waterboarding description, was written specifically in response to Jim Haynes' urgent request on July 25, 2002.

Note that there are a number of obvious typos in this document—the use of “mount” instead of “mouth” in the description of Silencing Facial Hold, the use of “medial” instead of “medical” in the description of Waterboarding, and the agreement problem I noted in the passage above with my “[sic].” Since this document is labeled as excerpts of the larger document, though, we can't be sure whether those are errors the SASC

staff created in making the excerpts or whether they exist in the original document. But the second “[sic]” in the passage above—marking the use of “learning” instead of “leaning”—was marked by the SASC staff.

I’m guessing that whatever service still used small box confinement in 2002 didn’t include typos in their description of it. This is the US military, after all, which doesn’t allow such errors unless a document is hurriedly thrown together in response to a personal request from DOD’s General Counsel. So this error at least suggests that JPRA created this description in direct response to Haynes’ request rather than taking an existing description. Which means they had the opportunity to change the description not only to accommodate what was actually being done to AZ, but to take an otherwise innocuous technique—cramped confinement—and rewrite it to effectively describe mock burial (or to name mock burial cramped confinement). (Though the fact that this was not an approved JPRA technique suggests that cramped confinement was not considered innocuous in any case.)

Mind you, this is not proof that this is what happened—that faced with the impossibility of approving mock burial, John Yoo and John Rizzo and Jim Haynes—all members, with David Addington—of the “War Council” that regularly met on this stuff—decided to simply get a document that claimed mock burial was not only an acceptable SERE technique used in one service, but it was called cramped confinement, not mock burial. All this proves is that (at least given the information we currently have available) it could have happened.

But that would sure explain why some of the documents created in this frenzy period have mysteriously disappeared.