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Ten Terrible Truths about the CIA Torture Memos, Part 1

by Andy Worthington

Andy Worthington, author of [The Guantánamo Files](#), analyzes ten particularly disturbing facts to emerge from the four memos, purporting to justify the use of torture by the CIA, which were issued by the Justice Department's Office of Legal Counsel (OLC) in August 2002 and May 2005, and released by the Obama administration last week.

The OLC, as the *New York Times* explained in September 2007, holds a uniquely influential position, as it “interprets all laws that bear on the powers of the executive branch. The opinions of the head of the office are binding, except on the rare occasions when they are reversed by the attorney general or the president.” The legal opinions were, therefore, regarded as a “golden shield” by the administration, although, as lawyer Peter Weiss noted [after I last wrote](#) about the Bush administration's war crimes, “it cannot be binding if it violates the constitution, or a *jus cogens* prohibition of international law, e.g. torture, or, perhaps, if it was made to order for the executive, as you demonstrate it was.”

1) The “torture memos” (August 2002)

The first of the four memos ([PDF](#)), dated August 1, 2002, is a companion piece to the notorious “Torture Memo” of the same day ([PDF](#)), leaked in the wake of the Abu Ghraib scandal, which, notoriously, attempted to redefine torture as the infliction of physical pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death,” or the infliction of mental pain which “result[s] in significant psychological harm of significant duration e.g. lasting for months or even years.”

These definitions were justified as legitimate attempts to interpret what the memo's authors — OLC lawyer John Yoo and Assistant Attorney General Jay S. Bybee — regarded as imprecision in the wording of the prohibition against torture in the [UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment](#), as implemented by Sections 2340-2340A of title 18 of the United States Code, which defines torture as any act committed by an individual that is “specifically intended to inflict severe physical or mental pain or suffering ... upon another person within his custody or physical control.”

In their attempts to justify the use of torture by U.S. forces, Yoo and Bybee not only sought to redefine “severe pain or suffering” and “severe mental pain or suffering”; they also sought to nullify the concept of “specific intent” by providing a defense for anyone whose actions were undertaken “in good faith,” and, in addition, noted, “Even if an interrogation method arguably were to violate Section 2340A, the statute would be unconstitutional if it impermissibly encroached on the President’s constitutional power to conduct a military campaign.”

The “torture memo” was disturbing enough in and of itself, of course, and in particular because it provided so much of the justification for the horrendous mistreatment of prisoners that followed, in Guantánamo, Afghanistan and Iraq, but until last week the contents of the second memo — authorizing the use of specific torture techniques for the CIA to use on the supposed “high-value detainee” [Abu Zubaydah](#) — had never even been glimpsed, although we knew much of what it contained from the reports of Red Cross interviews with the 14 “high-value detainees” transferred to Guantánamo in September 2006 — including, of course, Abu Zubaydah and [Khalid Sheikh Mohammed](#) (KSM) — which were first reported by Jane Mayer, and featured prominently in her book *The Dark Side*, and were then analyzed in detail by Mark Danner for the *New York Review of Books*, in an article published last month, and [a follow-up article](#), accompanied by the Red Cross report itself ([PDF](#)), that was published two weeks ago.

In the 18-page memo, John Yoo and Jay Bybee approved the use of ten techniques prohibited in the Army Field Manual, which eschews physical violence, and, instead, lays out a series of psychological maneuvers to secure cooperation. When applied with patience by skilled interrogators, these techniques (which are, essentially, also followed by several intelligence agencies including the FBI) are demonstrably effective, and have, for years, served to demonstrate that the U.S. is capable of operating without resorting to the use of torture, but the Bush administration ignored their effectiveness, introducing torture into the military and the CIA, and sidelining those, like the FBI, who had actually begun to achieve results with both Abu Zubaydah and some of the Guantánamo prisoners without resorting to the use of torture.

The ten techniques — whose use is minutely micro-managed with a chillingly cold attention to detail — include a handful of physical tactics which, to my mind, seem mild compared to the widespread physical violence that accompanied detention in the “war on terror” (“attention grasp,” “facial hold,” and “facial slap (insult slap)”), and a more insidious form of violence (“walling”), which involves repeatedly hurling prisoners against a false wall. Much more disturbing are the use of stress positions, sleep deprivation, confinement in small boxes, waterboarding, and — straight out of George Orwell’s *1984* — a proposal to prey on Zubaydah’s fear of insects by placing an insect into his “confinement box.”

This latter technique was, apparently, never used, but the others all were, and the memo blithely attempted to dismiss long-standing proof that all can be regarded as torture by being satisfied with time limits imposed on imprisonment in the “confinement boxes,” by declaring that the use of painful stress positions (on which no time limit seems to have been imposed) was only undertaken “to induce muscle fatigue,” and by claiming that the well-chronicled mental collapse that can result from sleep deprivation would, instead, only involve mild discomfort that “will generally remit after one or two nights of uninterrupted sleep,” even though,

as Yoo and Bybee also noted, “You have orally informed us that you would not deprive Zubaydah of sleep for more than eleven days at a time.”

Justifying the use of waterboarding — a form of controlled drowning that was known to the honest torturers of the Spanish Inquisition as “tortura del agua,” and that, in a previous incarnation of the United States (Vietnam), involved prosecuting U.S. soldiers for its use — Yoo and Bybee calmly approved of 20-minute sessions in which, presumably, the 20- to 40-second procedure was repeatedly as frequently as required, and shrugged off waterboarding’s demonstrably well-documented use as a form of torture by noting that, in the U.S. military schools, where it is taught in the counter-interrogation program known as SERE (Survival, Evasion, Resistance, Escape), from which it was reverse-engineered for the “war on terror,” it has never, according to “experts” consulted by the administration, produced “any adverse mental health effects.”

2) The Bradbury memos (May 2005)

This assertion is, of course, monstrously untrue, as psychologist Jeffrey Kaye demonstrated in [an article last week](#), but the underlying premise of the August 2002 memo — that, although torture was needed to “break” the CIA’s prisoners, it was not actually torture because it did not inflict “severe physical or mental pain or suffering” — was spelled out much more clearly in May 2005, when the OLC’s Principal Deputy Assistant Attorney General, Steven G. Bradbury, produced another three memos, also released last week (and available as PDFs [here](#), [here](#) and [here](#)), which picked up where Yoo and Bybee had left off.

Over the course of 106 pages, as he attempted to interpret torture so that it did not contravene the Convention Against Torture and Sections 2340-2340A of Title 18 of the United States Code, Bradbury revisited much of the ground covered by Yoo and Bybee, but inadvertently made it even clearer than his predecessors had that there was a ludicrous gulf between, on the one hand, endorsing torture, and, on the other, attempting to claim that it would not cause either severe physical or mental harm.

As with the earlier memos, from my point of view the arguments about the techniques not causing severe physical pain were more plausible than those in which Bradbury attempted to argue that techniques derived from the SERE program — which are based on teaching soldiers to resist techniques designed to cause a complete mental collapse — do not cause severe mental pain or suffering. The very fact that SERE psychologists were so prominent in the CIA’s torture program makes it clear that “learned helplessness” — involving the brutal training of prisoners to become dependant on their interrogators for every crumb of comfort in their wretched, tortured lives — was designed not just to cause them severe mental pain or suffering but to completely destroy them mentally. As Bradbury himself noted, when discussing the “conditioning techniques” that underpin the CIA prisoners’ conditions of confinement, “they are used to ‘demonstrate to the [detainee] that he has no control over basic human needs.’”

And yet, for page after page, Bradbury concluded that “nudity, dietary manipulation and sleep deprivation” — now revealed explicitly as not just keeping a prisoner awake, but hanging him, naked except for a diaper, by a chain attached to shackles around his wrists — are, essentially, techniques that produce insignificant and transient discomfort. We are, for example, breezily told that caloric intake “will always be set

at or above 1,000 kcal/day,” and are encouraged to compare this enforced starvation with “several commercial weight-loss programs in the United States which involve similar or even greater reductions in calorific intake.”

In “water dousing,” a new technique introduced since 2002, in which naked prisoners are repeatedly doused with cold water, we are informed that “maximum exposure directions have been ‘set at two-thirds the time at which, based on extensive medical literature and experience, hypothermia could be expected to develop in healthy individuals who are submerged in water of the same temperature,’” and when it comes to waterboarding, Bradley clinically confirms that it can be used 12 times a day over five days in a period of a month — a total of 60 times for a technique that is so horrible that one application is supposed to have even the most hardened terrorist literally gagging to tell all.

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