

WHO IS LYING? THE TORTURERS? OR JOHN YOO?

One of the potential bombshells in last week's FOIA dump appears in a CIA discussion about a potential statement in response to NYT's breaking of the torture tape story (PDF 86). The document notes that the videotapes would have shown the sheer number of times the torturers waterboarded Abu Zubaydah, and suggests that that may have presented legal problems. The document continues that someone (it appears to be the torturers) informed DOJ of the real number of times they waterboarded AZ, but CIA had no proof.

Jay Bybee's 1 Aug 2002 memo to John Rizzo stated, in part, "Moreover, you have also informed us that 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." (p. 2) and again, "You have indicated that these acts will not be used with substantial repetition, so that there is no possibility that severe physical pain could arise from such repetition." (p.11). The OIG review determined that Abu Zubaydah was subjected to [redaction] waterboard sessions, consisting of at least 83 separate exposures [half line redacted] assured us that he gave regular updates to DoJ (i.e., John Yoo [few words redacted] at OLC) during this time frame, and DoJ was aware of the real numbers, but we were never able to verify this with DoJ, as INV management at the time elected not to interview witnesses outside the building. In addition to the disparity in numbers, the method of water application as

recorded in the tapes was at odds with the Bybee opinion. [my emphasis]

That is, one problem with the videotapes is that, unless the torturers really did inform Yoo (and, I'm guessing, Jennifer Koester) about how and how many times they really used waterboarding then they would have been in violation of guidelines from DOJ.

The statement, by itself, is inflammatory enough. But particularly in light of what Yoo said to OPR in interviews conducted during the summer of 2005.

He told us during his interview: "I had actually thought that we prohibited waterboarding. I didn't recollect that we had actually said that you could do it." He added:

[T]he waterboarding as it's described in that memo, is very different than the waterboarding that was described in the press. And when I read the description in the press of what waterboarding is, I was like, oh, well, obviously that would be prohibited by the statute.

Now, granted, Yoo is not addressing the number of repetitions of waterboardings. And he points to the depiction of waterboarding in the press, not the depictions of waterboarding that appeared in the CIA IG Report (which, as it happens, matches the descriptions in the press with regards to volume of water and forced ingestion of it). So Yoo, as is his wont, has left some wiggle room here.

But he seems to suggest surprise that he had actually authorized the use of waterboarding.

As implausible as that is, assuming he simply forgot the phone call he made to John Rizzo on July 26, 2002 personally authorizing waterboarding and then forgot reviewing the

extensive descriptions Koester wrote into the Bybee Two memo, it strains credulity if Yoo was actually receiving updates from Thailand. Imagine how such an exchange might play out:

“Oh, by the way, John. We set a new record for ‘pours’ during one waterboard session! We drowned that motherfucker 27 times in today’s session!”

“Wha-What? I thought we told you not to use that medieval torture technique!”

John Yoo was playing (or actually was) dumb about the use of waterboarding in the months before CIA destroyed the torture tapes. Yet someone—perhaps Bruce Jessen or James Mitchell—claim they kept DOJ generally and Yoo specifically in the loop of what they were doing.

Someone is not telling the truth. Who is it?