

TORTURE TIMELINE



2002

- March** Senior Al Qaeda operative Abu Zubaydah is captured. CIA and FBI officials begin interrogating him.
- April-May** Attorneys from CIA's Office of General Counsel (OGC) began discussions about the CIA's proposed interrogation plan of Abu Zubaydah with the legal advisor to the National Security Council and the Office of Legal Counsel (OLC). CIA records show that CIA attorneys met in mid-May with White House Counsel Alberto Gonzales, Attorney General John Ashcroft, , and National Security Advisor Condoleezza Rice, to discuss the possible use of alternative interrogation methods; the CIA proposed particular methods, including waterboarding, at this meeting.
- July** Attorneys from OGC meet with Gonzales, Assistant Attorney General for the OLC Jay Bybee, the head of the Criminal Division of the Justice Department, the legal advisor to the National Security Council, and the chief of staff to the FBI director, to provide an overview of the proposed interrogation plan for Abu Zubaydah. Around this time, CIA asks OLC to prepare an opinion about the legality of the proposed techniques.
- August 1** **OLC ISSUES THREE SECRET DOCUMENTS NOW KNOWN AS "TORTURE MEMOS."** One, signed by Jay Bybee but reportedly written by John Yoo, interprets the federal criminal prohibition on torture, infamously concluding that conduct rises to the level of torture only if it causes pain akin to that associated with organ failure, impairment of bodily function, or death. In a letter to Gonzales, Yoo concludes that any interrogations that comply with the federal anti-torture statute do not violate US obligations under international treaties. A second opinion signed by Jay Bybee methodically assesses each of the tactics proposed by CIA in its interrogation plan of Abu Zubaydah—including "insects placed in a confinement box" and "the waterboard"—and concludes they do not violate the anti-torture statute.
- Fall** CIA interrogators use "enhanced interrogation techniques" approved in the memos against several high-value detainees. Three detainees are waterboarded.
- December** Secretary of Defense Donald Rumsfeld signs a memo on "Counter-Resistance Techniques" prepared by his general counsel, William J. Haynes II, in secret reliance on Yoo's memo. The memo authorizes fifteen harsh techniques, including prolonged stress positions, deprivation of light and sound, hooding, forced grooming, forced nudity, and manipulation of phobia (such as fear of dogs) to induce stress. The memo also concludes that three additional techniques, including waterboarding, "may be legally available" though, as a matter of policy, are not necessary to approve at this time. The memo states that Haynes discussed his decision with Deputies Paul Wolfowitz and Douglas Feith as well as Joint Chiefs of Staff General Richard Myers and that he "believe[s] all join in my recommendation" for approving these interrogation techniques.

2003

- March** **THE SENATE CONFIRMS JAY BYBEE TO A LIFE-TIME JUDGESHIP** on the Ninth Circuit Court of Appeals. The torture memos which bear his name have not yet been released to Congress or to the public. Jack Goldsmith, Special Counsel to Haynes, becomes head of OLC.
- July** After the Director of Central Intelligence (DCI) requests reaffirmation of the interrogation policies, according to CIA records, the DCI and CIA general counsel meet with two attorneys from OLC, Ashcroft, Gonzales, and Vice-President Dick Cheney to describe the CIA's interrogation techniques, including waterboarding. The participants agree at the end of the meeting that the CIA program is lawful and reflects administration policy.
- August-September** The "enhanced interrogation techniques" authorized by Rumsfeld migrate to Iraq and are formally approved by Lieutenant General Ricardo Sanchez. A month later, the abuses of Abu Ghraib are photographically recorded. The Senate Armed Services Committee report on detainee abuse, made public in December 2008, traces the Abu Ghraib abuse in late 2003 to Rumsfeld's December 2002 authorization and subsequent policies and plans

TORTURE TIMELINE

approved by senior military and civilian officials. Meanwhile, according to CIA records, the DCI briefs Colin Powell, the Secretary of State, and Rumsfeld on the CIA's interrogation techniques.

2004

May The CIA Inspector General issues a classified special review of the CIA interrogation program, after which the CIA requests that OLC prepare an updated legal opinion incorporating actual CIA experiences in interrogation practices to date. CIA General Counsel John Rizzo meets with Gonzales, Counsel to the Vice-President David Addington, the NSC Legal Advisor, and senior DOJ officials about the CIA's program.

June In a highly unusual move, **OLC WITHDRAWS YOO'S AUGUST 2002 MEMO**, which OLC head Jack Goldsmith considers "deeply flawed," "sloppily reasoned," and indefensible. By this point Goldsmith has also written a letter to the CIA advising that waterboarding is not legal. However, Bybee's August 2002 memo, authorizing other torture methods, remains in effect. Goldsmith, feeling that he has lost the confidence of senior administration officials, resigns from OLC.

July The Office of Professional Responsibility (OPR), a DOJ responsible for policing allegations of misconduct within the DOJ, begins an investigation of Yoo, Bybee, and Bradbury's involvement in issuing the torture memos, focusing on whether they deliberately slanted their legal advice to provide the White House with the conclusions it wanted.

August Daniel Levin, new acting head of OLC following Goldsmith's departure, writes a letter to the CIA reauthorizing the use of waterboarding. In the following months he will be one of the primary drafters of a new series of torture memos.

2005

February Alberto Gonzales becomes Attorney General. Levin leaves OLC to become legal advisor to the National Security Council. The day before he leaves OLC, he apologizes to Steven Bradbury, his principal deputy, for leaving the torture memos unfinished for Bradbury to sign his name on.

May **OLC ISSUES THREE MORE CLASSIFIED "TORTURED MEMOS,"** signed by Steven Bradbury, the Principal Deputy Assistant Attorney General for OLC, and known to be largely drafted by Daniel Levin. Made public in 2009 by the Obama Administration, these memos assess the legality of particular methods of interrogation, including waterboarding, and conclude that the proposed tactics are not illegal. One memo concludes that waterboarding does not cause "severe physical pain" because it is not physically painful. Another opinion concludes that the CIA's use of interrogation techniques, including waterboarding, on suspected terrorists would not be prohibited by the Fifth, Eighth, or Fourteenth Amendments to the Constitution because they would not "shock the conscience."

June President Bush nominates Steven Bradbury to become the head of OLC. Although the Senate refuses to ever confirm him, Bradbury remains the Acting Assistant Attorney General for OLC throughout the remainder of the Bush Administration.

October The New York Times reports that **THREE DETAINEES WERE KILLED DURING INTERROGATIONS** in Afghanistan and Iraq by CIA agents or CIA contractors.

December Congress passes the Detainee Treatment Act, which, among other things, prohibits the inhumane treatment of prisoners, including those at Guantanamo. The act also strips federal courts of jurisdiction to review habeas corpus petitions filed by Guantanamo detainees. President Bush signs the bill into law, along with a signing statement implying that, under the Constitution, he is not bound by the anti-torture provision of the Act.

2006

June In *Hamdan v. Rumsfeld*, the Supreme Court holds that Common Article 3 of the Geneva Convention applies to the conflict with Al-Qa'ida, contrary to the position adopted by the Bush Administration. Common Article 3 requires that detainees "shall in all circumstances be treated humanely," and prohibits "outrages upon personal dignity, in particular, humiliating and degrading treatment" and "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture."

July President Bush nominates DoD General Counsel Jim Haynes to a judgeship on the U.S. Court of Appeals for the Fourth Circuit, but the Senate blocks his confirmation.

TORTURE TIMELINE

October 16 Bush signs Military Commissions Act of 2006 which, among other things, modifies the War Crimes Act to limit violations to include torture and cruel or inhumane treatment only if they inflict “severe physical or mental pain or suffering.”

2007

February The International Committee of the Red Cross (ICRC) produces a report documenting its investigation of the CIA’s treatment of 14 “high-value detainees” prior to their transfer to Guantanamo. ICRC documents multiple acts of torture against detainees, including soaking a prisoner’s hand in alcohol and lighting it on fire, subjecting a prisoner to sexual abuse, and forcing a prisoner to eat a baseball.

July President Bush issues an executive order stating that the CIA’s interrogation program “fully complies” with applicable law. The order fails to identify the specific interrogation techniques which are permitted or prohibited. In conjunction, OLC releases an opinion signed by Bradbury, asserting the legality of the torture techniques authorized by the CIA. One of the most astounding arguments of the memo, contained in a footnote, is that the president has the power to simply declare that Article 3 of the Geneva Conventions do not apply to U.S. tactics, even though the Supreme Court had ruled precisely the opposite in *Hamdan*.

October-November Gonzales is forced out of his job as Attorney General in a scandal over politicized hiring and firing practices at DOJ. President Bush nominates retired Judge Michael Mukasey, who refuses to unequivocally state during his confirmation hearing that waterboarding is torture. He is confirmed by the Senate, 53-40.

2008

January Attorney General Mukasey appoints federal prosecutor John Durham to investigate the destruction of videotapes of CIA interrogations of high-level detainees who were waterboarded. Mukasey testifies before the Senate Intelligence Committee that waterboarding is not currently authorized for use by the CIA; accordingly, he refuses to express a view as to the technique’s legality. A month later, the CIA testifies before the committee and admits waterboarding had been used on three detainees.

John Yoo is sued in federal district court by Jose Padilla, an American citizen detained as an enemy combatant for several years until ultimately tried and convicted of aiding terrorists. The complaint seeks damages based on the alleged torture of Padilla, which he attributes to Yoo’s torture memos. As of August 2009, the judge has allowed the suit to proceed, rejecting all but one of Yoo’s immunity claims.

June 7 Fifty-six members of Congress sign a letter calling on Attorney General Mukasey to appoint a special prosecutor to investigate whether top Bush administration officials may have committed crimes in authorizing the use of harsh interrogation tactics against suspected terrorists. Mukasey refuses.

June 17 Former Navy General Counsel Alberto Mora testifies before the Senate Committee on Armed Services that there are officers in the U.S. military who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq are, respectively, the symbols of Abu Ghraib and Guantanamo.

June 26 Yoo and Addington appear before a House Judiciary Committee hearing on detainee treatment and executive power. Both are such evasive and frustrating witnesses that Rep. Steve Cohen (D-TN) tells them they would be great on “Beat the Clock.”

October Bradbury, still acting head of OLC, issues an opinion warning that “caution should be exercised before relying in any respect” on Yoo’s 2002 torture memos.

2009

January Susan Crawford, former chief judge of the U.S. Court of Appeals for the Armed Forces, appointed by President Bush in 2007 as the convening authority of the Guantanamo military commissions, tells the Washington Post that the treatment of detainee Al-Qhatani “met the legal definition of torture,” which is why the charges against him were dropped in May 2008 and new charges were not filed.

OPR issues to Attorney General Mukasey a 220-page draft report five years in the making, reviewing whether the OLC lawyers acted ethically and competently in writing the torture memos. According to leaks to the press, the OPR report reveals extensive email communication between OLC lawyers and senior officials at the CIA and in the White House. Mukasey does not want the report made public, and OPR gives Yoo, Bybee, and

TORTURE TIMELINE

Bradbury copies of the report and the opportunity to provide written comments in response.

- January 15** With just five days left in the Bush Administration, Bradbury issues an opinion advising that “certain propositions stated in several opinions issued by the Office of Legal Counsel from 2001-2003 respecting the allocation of authorities between the President and Congress in matters of war and national security do not reflect the current views of this Office.”
- January 22** During his first week in office, President Obama issues an executive order “Ensuring Lawful Interrogations.” The order revokes Bush’s Executive Order on interrogations, limits the techniques used by government officers, and directs all government agents that until the Attorney General provides further guidance, they are not to rely on any legal opinion on interrogations rendered by the Justice Department between September 11, 2001, and January 20, 2009.
- February** Eric Holder is confirmed as Attorney General. At his confirmation hearing before the Senate Judiciary Committee, he states that waterboarding is torture.
- April 16** President Obama orders the release of four additional OLC “torture memos,” written by Bradbury in 2005, which reveal that CIA interrogators used waterboarding 266 times on 2 detainees.
- June** Attorney General Holder testifies before the Senate Judiciary Committee that the 5-year old OPR report will be ready for release within several weeks.
- August 24** Obama Administration releases a CIA Inspector General’s report, as ordered by the judge in Freedom of Information Act litigation brought by the American Civil Liberties Union, as well as several other OLC “torture memos.” Holder announces a “preliminary review” into the interrogation of certain detainees subjected to “enhanced interrogation techniques,” but he does not release the OPR report.
- November 3** At a panel discussion at American University, Daniel Levin says, “I personally am not opposed to criminal investigation of the conduct of myself and others during the period in question, because I think any government employee is appropriately subject to investigation of their conduct while they are serving in the government.”
- November 18** Asked about the status of the OPR Report by Senator Sheldon Whitehouse (D-RI) at an oversight hearing of the Senate Judiciary Committee, Attorney General Eric Holder answers that DOJ will release the report by month’s end, “I think this is a matter of great public interest, the whole question of the OPR report...The report is completed. It is being reviewed now and it is in its last stages, there is a career prosecutor who has to review the report. We expect that that process should be done by the end of the month and at that point the report should be issued.”