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CIA Interrogation Tapes Predated Torture Memo

By Chip

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By Jason Leopold | The Public Record [2]

The CIA began videotaping interrogations of two alleged “high value” terrorist detainees in April 2002, four months before Bush administration attorneys issued a memo clearing the way for CIA interrogators to use “enhanced interrogation techniques,” the Justice Department disclosed in court documents.

However, in a letter to a federal court judge Thursday, the Justice Department only agreed to provide details on the harshest interrogations of prisoner Abu Zubaydah that occurred in August 2002 – after the Bush administration's lawyers had provided the legal cover for waterboarding and other brutal tactics.

That letter prompted ACLU lawyers to express concern over why the government offered no promises regarding the preceding months. Amrit Singh, an ACLU staff attorney, said the government’s “motivations in confining its [latest] response to the month of August are highly suspect.”

The ACLU is suing the CIA to release documents related to 92 interrogation videotapes that were destroyed by the CIA in 2005 as public attention began focusing on allegations that the Bush administration had subjected “war on terror” detainees to brutal interrogations that crossed the line into torture.

Lev Dassin, acting U.S. Attorney for the Southern District of New York, said the government intends to provide the civil liberties organization “contemporaneous records that described the interrogations at issue ... for the month of August 2002 (approximately 65 documents).”

In a “work plan” laying out a timetable for processing documents for release, Dassin added that “August 2002 was the month during which Abu Zubaydah was subjected to the most intensive interrogations.” Zubaydah, who is believed to have arranged travel for al-Qaeda operatives, was captured after a gun fight in Pakistan in March 2002 and was whisked away to a CIA “black site” prison on March 28, 2002.

In previous court filings, Dassin acknowledged that 12 videotapes showed Zubaydah and Abd al-Rahim al-Nashiri, the alleged mastermind of the attack on the USS Cole in 2000, being subjected to

waterboarding and other harsh methods. The 80 other videotapes purportedly show Zubaydah and al-Nashiri in their prison cells.

“It seems like the letter provides no explanation for why records for other months should not be included in the government’s work plan,” the ACLU’s Singh said in an interview. “We already know that an FBI agent who witnessed Abu Zubaydah’s interrogation prior to August 2002 said he believed it to be ‘borderline torture.’”

FBI/CIA Dispute

Singh was referring to a Justice Department Inspector General report released last year about the FBI’s role in harsh interrogations. The report, prepared by Inspector General Glenn Fine, said two FBI agents, identified by the pseudonyms “Thomas” and “Gibson, interviewed Zubaydah shortly after he was captured in March 2002. One of the agents even tended to Zubaydah’s gunshot wounds.

The FBI claimed, according to Fine’s report, that Zubaydah had provided valuable intelligence via “rapport building” interviews. However, within a few days CIA interrogators intervened. They claimed Zubaydah had been “only providing ‘throw-away information’” and adopted more aggressive tactics.

When one of the FBI agents complained to the CIA interrogators about the brutal tactics, he was told the techniques were approved "at the highest levels" of government. “Thomas” refused to participate and protested to senior FBI officials about the techniques the CIA used against Zubaydah.

According to Fine’s report, “Thomas” did not see Zubaydah being waterboarded but witnessed other methods being used against him during May 2002 that he said were “borderline torture.”

Agent “Thomas’s” complaints to the FBI eventually led Pasquale D’Amuro, the FBI’s assistant director for counterterrorism, to remove the agents from the interrogations, according to Fine’s report. D’Amuro told Fine that he brought the agents’ complaints to FBI Director Robert Mueller and "stated that his exact words to Mueller were 'we don't do that' and that someday the FBI would be called to testify and he wanted to be able to say that the FBI did not participate in this type of activity."

According to Fine’s report, John Rizzo, the CIA’s acting general counsel, refused to allow investigators from the Office of Inspector General to question Zubaydah in January 2007. Fine said Rizzo’s refusal to allow investigators access to Zubaydah was “unwarranted” and “hampered” the probe.

Fine said Rizzo told the inspector general’s office that he refused the request because Zubaydah "could make false allegations against CIA employees."

At the time of Fine’s request, the International Committee of the Red Cross had obtained access to Zubaydah and 13 other “high-value” detainees and concluded that their treatment “constituted torture.” The ICRC sent its report to Rizzo on Feb. 14, 2007.

However, neither the ICRC’s report nor Fine’s include specific dates about the “enhanced” techniques used against Zubaydah.

According to Fine's report, "Gibson" said he "remained at the CIA facility until some time in early June 2002, several weeks after 'Thomas' left, and that he continued to work with the CIA and participate in interviewing Zubaydah."

When he returned to the FBI headquarters in June 2002 to meet with officials about Zubaydah "Gibson" said he had no "moral objection" to the techniques being used against Zubaydah because they were "comparable" to the "harsh interrogation" techniques he "himself had undergone...as part of the U.S. Army Survival, Evasion, Resistance, and Escape (SERE) training."

SERE was meant to prepare U.S. soldiers for abuse they might suffer if captured by an outlaw regime. But it was reverse engineered by psychologists working for the military and CIA and used against detainees during interrogations. SERE training techniques include stress positions, forced nudity, use of fear, sleep deprivation and, until waterboarding.

First Prisoner

Zubaydah told the ICRC that CIA interrogators said he was their first subject, "so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people." Zubaydah said he was repeatedly smashed against a wall, placed inside a black wooden box, and was waterboarded, a technique that creates the panicked reflex of drowning.

Rizzo also has been questioned about his role in the videotape destruction by John Durham, who was appointed special prosecutor last year by Attorney General Michael Mukasey to probe whether the destruction of the tapes constituted a crime.

Last week, Durham questioned the CIA's former number three official, Kyle "Dusty" Foggo, about the destruction of the tapes. Foggo, who was sentenced to three years in prison for fraud for steering lucrative contracts to a friend, was due to report to federal prison last week but Durham asked for a delay so he could question him about the tape destruction.

Singh, the ACLU attorney, said Friday she could not speculate whether videotapes made prior to August 2002 might have depicted "enhanced" methods such as waterboarding. Those techniques were cleared for use by an Aug. 1, 2002, legal opinion that narrowly defined torture, thus enabling the Bush administration to claim that its harsh tactics didn't qualify as torture.

Last year, Dick Cheney admitted in several interviews that he "signed off" on the waterboarding of three "high-value" prisoners and personally approved the harsh interrogations of 33 other detainees.

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