

A TORTURED DEBATE

AMID FEUDING AND TURF BATTLES, LAWYERS IN THE WHITE HOUSE DISCUSSED SPECIFIC TERROR-INTERROGATION TECHNIQUES LIKE 'WATER-BOARDING' AND 'MOCK BURIALS'

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Ibn al-Shaykh al-Libi was America's first big trophy in the war on terror: a senior Qaeda operative captured amid the fighting in Afghanistan. What is less known is that al-Libi, who ran Qaeda training camps, quickly became the subject of a bitter feud between the FBI and the CIA over how to interrogate terror suspects. At the time of al-Libi's capture on Nov. 11, 2001, the questioning of detainees was still the FBI's province. For years the bureau's "bin Laden team" had sought to win suspects over with a carrots-and-no-sticks approach: favors in exchange for cooperation. One terrorist, in return for talking, even wangled a heart transplant for his child.

With al-Libi, too, the initial approach was to read him his rights like any arrestee, one former member of the FBI team told NEWSWEEK. "He was basically cooperating with us." But this was post-9/11; President Bush had declared war on Al Qaeda, and in a series of covert directives, he had authorized the CIA to set up secret interrogation facilities and to use new, harsher methods. The CIA, says the FBI source, was "fighting with us tooth and nail."

The handling of al-Libi touched off a long-running battle over interrogation tactics inside the administration. It is a struggle that continued right up until the Abu Ghraib scandal broke in April--and it extended into the White House, with Condoleezza Rice's National Security Council pitted against lawyers for the White House counsel and the vice president. Indeed, one reason the prison abuse scandal won't go away--two months after gruesome photos were published worldwide--is that a long paper trail of memos and directives from inside the administration has emerged, often leaked by those who disagreed with rougher means of questioning.

Last week the White House dismissed news accounts of one such memo, an explosive August 2002 brief from the Justice Department's Office of Legal Counsel disclosed by The Washington Post. The memo, drafted by former OLC lawyer John Yoo, has been widely criticized for seeming to flout conventions against torture. It defends most interrogation methods short of severe, intentionally inflicted pain and permanent damage. White House officials told reporters that such abstract legal reasoning was insignificant and did not reflect the president's orders. But NEWSWEEK has learned that Yoo's August 2002 memo was prompted by CIA questions about what to do with a top Qaeda captive, Abu Zubaydah, who had turned uncooperative. And it was drafted after White House meetings convened by George W. Bush's chief counsel, Alberto Gonzales, along with Defense Department general counsel William Haynes and David Addington, Vice President Dick Cheney's counsel, who discussed specific interrogation techniques, says a source familiar with the discussions. Among the methods they found acceptable: "water-boarding," or dripping water into a wet cloth over a suspect's face, which can feel like drowning; and threatening to bring in more-brutal interrogators from other nations.

Al-Libi's capture, some sources say, was an early turning point in the government's internal debates over interrogation methods. FBI officials brought their plea to retain control over al-Libi's interrogation up to FBI Director Robert Mueller. The CIA station chief in Afghanistan, meanwhile, appealed to the agency's hawkish counterterrorism chief, Cofer Black. He in turn called CIA Director George Tenet, who went to the White House. Al-Libi was handed over to the CIA. "They duct-taped his mouth, cinched him up and sent him to Cairo" for more-fearsome Egyptian

interrogations, says the ex-FBI official. "At the airport the CIA case officer goes up to him and says, 'You're going to Cairo, you know. Before you get there I'm going to find your mother and I'm going to f--- her.' So we lost that fight." (A CIA official said he had no comment.)

The FBI, with its "law enforcement" mind-set, found itself more and more marginalized. The struggle extended to the Guantanamo Bay detention center in early 2002, as "high value" suspects were shipped there for interrogation. Frustrated FBI officials, along with military interrogators like those from the Naval Criminal Investigation Service, found themselves "like kids with their noses pressed up against the glass," says a source involved in the early days at Gitmo. "Law enforcement had a long history of interrogating people. The intelligence community did not. Back in the cold war, they'd debriefed defectors. But that was all. So the intelligence community, once it got the mission, was searching for effective techniques of interrogation--and in their inexperience were floundering for a while."

Even within the CIA and the Defense Intelligence Agency, the debates never ceased. CIA officials remembered all too well how the agency was blamed in the 1970s human-rights backlash over covert plots. The agency, say senior intelligence officials, made sure it had explicit, written authorization from lawyers and senior policymakers before using new interrogation techniques. At the same time the agency felt intense pressure to extract information from suspects. So it began experimenting with methods like water-boarding and open-handed slapping. The CIA also asked to use "mock burial," in which a top Qaeda captive would be led to believe he was going to be buried alive. Administration officials declined to say whether the proposal was ever adopted. "My overwhelming impression is that everyone was focused on trying to avoid torture, staying within the line, while doing everything possible to save American lives," Tim Flanigan, formerly Bush's deputy White House counsel, told NEWSWEEK.

As with al-Libi, the internal debates usually turned on what to do with a specific Qaeda detainee. That's what happened in the summer of 2002 after the capture of Abu Zubaydah, who refused to cooperate after an initial spate of talkativeness. Frustrated CIA officials went to OLC lawyer Yoo for an opinion on bolder methods.

Another high-value Qaeda suspect captured toward the end of 2002, Mohamed al Qatani, provoked a major change of approach at Guantanamo Bay. "There was a spike in a lot of intel that we were picking up in terms of more attacks" on America, said Gen. James Hill, chief of the U.S. Southern Command. "We weren't getting anything out of him" using standard techniques outlined in Army Field Manual 34-52. So CIA and military-intel interrogators came up with new tactics based on the sorts of methods that U.S. Special Forces are specifically trained to resist, a Defense source says. The Special Forces' Survival, Evasion, Resistance and Escape course culminates in interrogations that include some physical roughing up; sensory, food and sleep deprivation, and a "water pit" in which detainees have to stand on tip-toe to keep from drowning.

Some inside the military criminal-investigation units at Gitmo, especially Navy personnel, approached Navy Secretary Alberto Mora with their concerns about violations of the Geneva Conventions. Perturbed, Mora in January 2003 went to see the Defense Department's Haynes and argued that the DOD was getting into unethical territory, and he warned of unhappiness among the uniformed military on this issue. Haynes concurred. On Jan. 15, 2003, according to a chronology supplied by Pentagon officials, Defense Secretary Donald Rumsfeld suspended use of the heightened techniques. Haynes, on Rumsfeld's orders, then set up an Interrogation Working Group that issued a March 6, 2003, memo on accepted practices, which in turn was based on the reasoning of Yoo's August 2002 Justice Department brief.

It's still not clear whether these first decisions made in the war on terror eventually led to the abuses at Abu Ghraib. What does seem clear is that despite early efforts to vet interrogation techniques, the administration grew less and less careful as pressure built to get good intelligence. White House officials last week insisted that President Bush had made clear in an early-2002 policy directive that torture would not be used during the interrogation of Qaeda detainees. "The instructions went out to our people to adhere to the law," Bush himself told reporters. But the law according to whom? Bush originally said this was a war in which the old rules did not apply. But he may be learning now that they do.

WITH MICHAEL ISIKOFF, MARK HOSENBALL AND TAMARA LIPPER IN WASHINGTON

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