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“Padilla v. Yoo: The Alleged Torture”

Alleging that he was tortured during three and a half years behind bars at a Navy brig in South Carolina, Jose Padilla, a United States citizen, has now sued John Yoo, the former Justice Department lawyer who reportedly devised the legal theories to justify the interrogation techniques used on Padilla. While Padilla raises a number of constitutional claims, including violations of his rights to counsel and to exercise his Muslim religion, the heart of his lawsuit is that Yoo’s legal advice purported to justify his torture, in violation of Due Process of Law as guaranteed by the Fifth Amendment to the Constitution.

Padilla, who is separately appealing his recent conviction for conspiracy to commit terrorism, asks the court to award him a declaratory judgment that his treatment violated the Constitution, and to order Yoo, now a law professor at Berkeley, to pay him one dollar in damages.

Padilla’s suit raises important questions of law and fact. For example, what is the scope of immunity from liability for lawyers who give bad legal advice to federal officials? Former Assistant Attorney General Jack Goldsmith, who later revoked Yoo’s key torture memorandum, calls Yoo’s legal advice “deeply flawed: sloppily reasoned, overbroad, and incautious in asserting extraordinary constitutional authorities on behalf of the President.” Even so, was Yoo’s advice the proximate cause of any mistreatment of Padilla?

However such questions of law are resolved – I will tackle them in next week’s commentary – Padilla’s allegations of his treatment in prison, if true, ought to shame a civilized society.

According to Padilla’s complaint, he was imprisoned in a nine foot by seven foot cell in the Navy brig in Charleston for three years and eight months. For the first 21 months, he was denied all contact with anyone outside the brig, including his family and lawyers. His only human contact was with interrogators and guards.

His keepers deliberately set out to disorient him and to destroy his mental equilibrium by means of sensory deprivation. He was allowed no watch or clock, nor any news about the outside world. The only window in his cell was blacked out. When he was allowed out of his cell, his eyes and ears were covered.

Periodically he was subjected to absolute light or darkness for periods in excess of 24 hours. He was subjected to extreme variations of the temperature in his cell, where his bed consisted of a cold steel slab with no mattress, pillow or blanket. He was regularly subjected to loud noises at all hours of the night, caused by brig guards and others deliberately banging on the walls and bars of his cell. He was also forced to endure noxious fumes injected into his cell, causing pain to his eyes and nose.

For hours at a time, he was kept shackled and manacled, or forced to sit or stand in markedly uncomfortable and painful positions for hours on end.

His interrogators threatened to cut him with a knife and to pour alcohol into the wounds. They also threatened to kill him straightaway, or to send him to another country where they said he would receive far worse treatment. Against his will, they administered chemicals, which Padilla believed were psychotropic drugs.

When his lawyers were finally allowed to meet with him, he was not permitted to tell them about conditions in the prison or about any of the interrogation methods.

If Padilla's allegations are true, they clearly meet the definition of torture under international law: the intentional infliction of severe physical or mental pain for purposes such as interrogation. The United Nations Committee on Torture and the Inter-American Court of Human Rights, among other international bodies, have held that *incommunicado* detention, even for periods far shorter than Padilla endured, is torture. They have also ruled that combinations of sensory deprivation techniques amount to torture as well.

And for good reason. According to Padilla's complaint, a "substantial body of clinical literature and expert opinion ... holds that restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning, and that even a few days of solitary confinement predictably causes brain patterns to become measurably abnormal."

Whatever the ultimate fate of Padilla's lawsuit, Congress, which is already inquiring into the interrogation techniques used by the CIA against foreign nationals overseas, should examine what was allegedly done to a United States citizen inside the United States. Do we really want our government, with no judicial supervision, to have license to treat American citizens in this way?

Doug Cassel's commentaries are generally broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM, and rebroadcast at 9 PM in the evening. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.