

THE SCOPE OF THE SSCI INVESTIGATION AND WHERE IT LEADS

Honest. I was going to write this post today or yesterday or tomorrow even before Rachel Maddow said people would be parsing her interview last night with Sheldon Whitehouse closely (here's the full interview).

Back in February, I was very skeptical whether a DiFi-led SSCI investigation into torture would be a rigorous investigation. I owe DiFi an apology, because by all appearances this investigation is time-consuming, demanding, and productive. The Senate Intelligence Committee has been maintaining an unbelievable pace of closed hearings this year—often two a week—many of which must deal with this investigation (though some clearly deal with other intelligence issues such as the warrantless wiretapping program). At least per Rachel's comments in her interview with Senator Whitehouse, the committee won its squabble with CIA to get unredacted cables from the field. And as a result of the hearings, Sheldon Whitehouse has come out and said "no further actionable intelligence" was gotten through waterboarding Abu Zubaydah. Thus far, this is not the weasely whitewash we've come to expect from SSCI (though it remains to be seen whether Kit Bond and friends can politicize whatever report we get out of it—and whether we get a report at all). So I apologize to DiFi for my doubts.

I wanted to look at the scope and the direction of this investigation—at least what we know. Both at the beginning, and now, SSCI has said the investigation covers three things:

- Whether detentions and interrogations complied with DOJ authorizations

- Whether the interrogations gained valuable intelligence or not
- Whether SSCI was kept properly informed

Here's how Whitehouse described the questions they're asking in his Senate speech the other day:

I see three issues we need to grapple with. The first is the torture itself: What did Americans do? In what conditions of humanity and hygiene were the techniques applied? With what intensity and duration? Are our preconceptions about what was done based on the sanitized descriptions of techniques justified? Or was the actuality far worse?

Were the carefully described predicates for the torture techniques and the limitations on their use followed in practice? Or did the torture exceed the predicates and bounds of the Office of Legal Counsel opinions?

[snip—Whitehouse basically interjects the same argument I made here, that Panetta's declaration makes it clear the torture did exceed OLC bounds]

The questions go on: What was the role of private contractors? Why did they need to be involved? And did their peculiar motivations influence what was done? Ultimately, was it successful? Did it generate the immediately actionable intelligence protecting America from immediate threats that it had been sold as producing? How did the torture techniques stack up against professional interrogation?

Well, that is a significant array of questions all on its own, and we intend

to answer them in the Senate Intelligence Committee under the leadership of Chairman Feinstein, expanding on work already done, thanks to the previous leadership of Chairman Rockefeller.

As I noted, both Whitehouse and I have pointed out that Panetta's declaration by itself makes clear that the torture exceeded the authorizations it had gotten from OLC—but we already knew that from the CIA itself. And as Whitehouse has made clear, and I have made clear, we already know the program was ineffective—but we already knew that from the CIA itself. And (though Whitehouse doesn't focus on this aspect of the investigation), we know that CIA did not brief SSCI the way it said it did—nor in the manner it was legally obliged to do. We know that, too, from the CIA itself.

So where does that lead us? That's why this exchange from Rachel's interview with Whitehouse last night is so important.

Maddow: The way you've described that makes me want to ask a question that no one's been able to tell me—and I've been asking a lot of people. The remit of what the intelligence committee is looking at right now—looking at what happened to High Value Detainees, millions of pages of documents, succeeded in getting agreements to get stuff completely unredacted. We know it's going to be a big comprehensive look at what happened to those High Value Detainees. Does it only look at what the CIA did, or will it look at the chain of command, whether or not instruction came from the White House, the Office of the Vice President beyond the Intelligence Agency?

Whitehouse: We're not at the stage yet, in the investigation, where those chain of command issues are yet raised. I hope

very much that it will. I believe it implicates chain of command issues. And I think that that's a critical question.

Maddow: But it's not what the intelligence committee is looking at right now and we should not expect that will be in the intelligence committee's report when it comes out in six months or so?

Whitehouse: I would not go that far. You have to sort of ... investigations are step by step. They're iterative. And you have to get to a certain place before you go on and we're not quite at that place, so that decision hasn't been made. I hope it gets made, I think it will be made. There is, I think, justification that it be made. But it does raise the issue of getting beyond the purview of the intelligence committee and into what the Bush Administration contended was protected by executive privilege.

Maddow: Right.

Whitehouse: So conceivably, other investigations, executive branch investigations, might have gotten under way by that point. And against an executive branch investigation, executive privilege doesn't apply. So, I guess, stand by.

Maddow: What you just said is very important, it is going to be parsed a lot by a lot of people including me, and it clarifies what we should be expecting and not expecting about this and what accountability is going to look like in this country on this issue, actually more than anybody else I know has said before, so thank you.

[Rachel moves to close the interview, Whitehouse interrupts]

Whitehouse: One other important question is, what were the private contractors doing, and why did they have so much access that they could interrupt what was probably the most productive, intelligence interrogation yet done in the global war on terror—not once but twice, even though they were unproductive. What enabled them to have that power to interrupt such a productive interrogation.

Maddow: Yeah, who were they calling in Washington when they were getting those interrogations?

Whitehouse: Good questions to be asked.

This is Sheldon Whitehouse, former Rhode Island Attorney General and US Attorney, explaining how you build a case. This former prosecutor is thinking clearly of establishing a case, and then either pursuing it in SSCI—or referring it, as he suggested with his reference to an executive branch investigation. And in both this exchange and in his speech the other day, Whitehouse told both viewers and his colleagues to stand by.

As I said, I was skeptical about this investigation. But Whitehouse, at least, seems to think that after the questions we already know the answers to—did the interrogators exceed guidelines, did it produce worthwhile intelligence, did the committee get fully briefed—it will lead in other directions, including, potentially, forcing a DOJ investigation.

Time to give kudos where they're deserved. If you're so inclined, why not give Senator Feinstein a call—(202) 224-3841—and thank her for leading this investigation (it's not often we give DiFi thanks around here, but it appears deserved, and carrots often work much better than sticks).