

CIA MET WITH WHITE HOUSE ABOUT HOW TO RESPOND TO JANE HARMAN'S TORTURE WARNINGS

After being briefed on February 5, 2003 that the CIA had used waterboarding and intended to destroy tapes depicting that torture, Jane Harman wrote CIA General Counsel Scott Muller a letter raising concerns. Harman warned CIA they should not destroy the torture tapes, whether or not they constituted an official record.

You discussed the fact that there is videotape of Abu Zubaydah following his capture that will be destroyed after the Inspector General finishes his inquiry. I would urge the Agency to reconsider that plan. Even if the videotape does not constitute an official record that must be preserved under the law, the videotape would be the best proof that the written record is accurate, if such record is called into question in the future. The fact of destruction would reflect badly on the Agency.

And she asked directly whether President Bush had bought off on torture as a policy.

I would like to know what kind of policy review took place and what questions were examined. In particular, I would like to know whether the most senior levels of the White House have determined that these practices are consistent with the principles and policies of the United States. Have enhanced techniques been authorized and approved by the President?

In his response to her, Muller basically ignored her warning about the torture tapes. And he gave her a very indirect answer to the question that—under the National Security Act—she should have been able to get a direct answer on, whether or not Bush had signed off on the torture.

While I do not think it appropriate for me to comment on issues that are a matter of policy, much less the nature and extent of Executive Branch policy deliberations, I think it would be fair to assume that policy as well as legal matters have been addressed within the Executive Branch.

As it turns out, Scott Muller was not acting alone when he largely blew off Harman's concern. Document 28 of the CIA's Vaughn Index on the torture tape destruction reveals that CIA met with the White House about its response to Harman. (There's also a one-page draft of the letter to Harman dated February 19.) The Vaughn Index describes the second email, which has the subject "Harmon Letter," this way:

This is a one-page email, discussing a meeting between CIA and the White House regarding the CIA's response to a congressional inquiry. The document also includes the draft text of a letter to Congress. This document contains information relating to the sources and methods of the CIA. The document also contains predecisional, deliberative information, CIA attorney work-product, and information provided by a CIA attorney to his client in connection with the provision of legal advice.

Thus, even though Harman's letter and Muller's response have been declassified, the CIA is claiming that we can't know what Muller advised (himself? Bush? Tenet? Precisely who is the CIA General Counsel's client, here?) about how to

respond to Harman's inquiry.

So we know that the White House weighed in on how to respond to Harman. We're just not allowed to know how they weighed in.