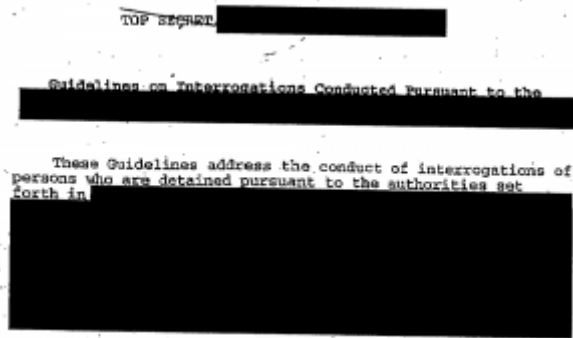


GEORGE TENET'S BUREAUCRATIC CYA

Let me
divert
from
my
obsess
ion on
the
CIA's
effort



s to hide references to what I believe is the September 17, 2001 Memorandum of Notification authorizing torture and a whole lot else to talk about what a neat bureaucratic trick George Tenet pulled. As I've confirmed, what the CIA is going to some length to hide is the second half of the title of the document George Tenet drew up to try to impose some kind of controls on the CIA's torture program in January 2003. The title reads, "Guidelines on Interrogations Conducted Pursuant to the" with the authorities that authorize such interrogations redacted.

But let's take a step back and put that document—with its now highly sensitive invocation of the authorities on which the torture program rested—in context.

As far as I'm aware, unlike Michael Hayden and John Rizzo, Tenet has not publicly confirmed a Presidential Memorandum of Notification authorized the torture program. In his memoir, he describes a briefing he conducted on September 15, 2001, two days before Bush signed the MON. He describes asking for authority to detain al Qaeda figures.

We raised the importance of being able to detain unilaterally al-Qa'ida operatives around the world.

He also pitched using drones to kill al Qaeda operatives.

We suggested using armed Predator UAVs to kill Bin Laden's key lieutenants, and using our contacts around the world to pursue al-Qa'ida's sources of funding, through identifying non-governmental organizations (NGOs) and individuals who funded terrorist operations.

And he describes a whole bunch of other asks, like partnering with the Uzbekistan and—as part of another ask—with Syria and Libya. In short, Tenet describes asking for authorization to do the things we know are included in that MON.

Then, he describes watching Bush kick off the war on September 20, reflecting,

By then, as I remember, the president had already granted us the broad operational authority I had asked for.

Well, sucks to be Tenet, because as it happens, Bush authorized those activities broadly, but never put in writing that the authorization to detain al Qaeda figures included the authorization to torture

A few days after the attacks, President Bush signed a top-secret directive to CIA authorizing an unprecedented array of covert actions against Al Qaeda and its leadership. Like almost every such authorization issued by presidents over the previous quarter-century, this one was provided to the intelligence committees of the House and Senate as well as the defense subcommittees of the House and Senate appropriations committees. However, the White House directed that details about the most ambitious, sensitive and potentially explosive new program authorized by the President—the capture, incommunicado detention and aggressive interrogation of senior Al Qaeda operatives—could only be shared with the leaders of the House

and Senate, plus the chair and ranking member of the two intelligence committees.

As always, CIA dutifully followed White House orders, so for the next five years we only told those select members—euphemistically dubbed the “Gang of 8”—about the program as it developed and expanded. Only they were briefed on CIA’s secret detention facilities overseas and the employment of so-called “enhanced interrogation techniques” (EITs), including the waterboarding of high-value detainees like Abu Zubaydah and Khalid Sheik Mohammad.

Fast forward 16 months. The CIA has, as ordered, started brutally torturing detainees. With video! In addition to waterboarding Abu Zubaydah and Abd al Rahim al-Nashiri, probably conducting a mock burial—with video!—of Abu Zubaydah (in violation of John Yoo’s sole limit to the torture program), and staging a mock execution with Nashiri, the CIA killed at least Gul Rahman (with DOD torturing two other men to death). Jim Pavitt decided to get CIA’s Inspector General involved. Then, on January 24, 2003, DOJ and CIA got together to discuss the legality of all this torture, mock execution, and killing. While Criminal Division Chief Michael Chertoff told CIA that “use of weapon to frighten a detainee could have violated the law” (he seemed less interested in a different episode), he did tell CIA that DOJ will let CIA OIG develop the facts. Four days later, on January 28, 2003, Rizzo called CIA Inspector General John Helgerson and said,

Based on what Chertoff told us when we gave him the heads up on this last week, the Criminal Division’s decision on whether or not some criminal law was violated will be predicated on the facts that you gather and present to them.

And that's when John Yoo and Jennifer Koester started working with the Counterterrorism Center to retroactively authorize a lot of what had been done so when CIA Inspector General was done collecting the facts, it would look like they complied with this (retroactively generated) set of guidelines.

But that's also the very same day, January 28, 2003, when Tenet issued this memo (there are records of conversations with Rizzo in the period that I'd need a long time to dig up, but it's fairly safe to assume he was in the loop on the legal issues).

Now, some aspects of this memo are key improvements. It added more oversight and mandated a cable record of the treatment involved.

Some are technically expansions over what John Yoo had authorized. The memo added the use of diapers and abdominal slaps to the existing list of approved techniques.

But in the context of this FOIA battle between ACLU and CIA, I'm most interested in how CIA's staff structured the document. As noted, the title as well as the entire first paragraph describes what authorized the program—presumably the MON the CIA is trying to hide all mention of.

But whoever structured this document also built it for maximum mass-coverage. The legal authority appearing in the title—what I suspect to be a reference to the MON—also appears in the header of each page. That holds for the last page, too, which anyone engaging in enhanced interrogation would be required to sign. Moreover, the statement they attest to once again repeats that authorization.

In short, this document was designed to make it impossible to discuss the program without seeing the basis of its authorization, presumably including reference to the President. And anyone who engaged in torture would presumably know that Bush had authorized such behavior.

So as I continue to obsess about this little reference to the authorization for the torture program, remember that it appears in all these places because at a time when DOJ was considering legal charges against the CIA for torture, George Tenet made sure that the authorization—presumably, Bush’s authorization—appeared every time someone discussed the structure of the program.