

DICK CHENEY'S TORTURE KABUKI

I wanted to pull three threads together in this post, which suggest how Cheney instituted torture in this country:

- Alberto Gonzales may have been approving torture even while Condi Rice and others went through the show of getting an OLC opinion to authorize it;
- CIA claimed to be briefing Congress when it wasn't;
- The Bush Administration then claimed Congress had bought off on torture to persuade those objecting to torture within the administration.

There are also certain parallels with the way Cheney implemented his illegal wiretap program.

Alberto Gonzales' approvals

As Ari Shapiro reported last week, Alberto Gonzales was personally approving the techniques Mitchell's torturers would use on a daily basis.

The source says nearly every day, Mitchell would sit at his computer and write a top-secret cable to the CIA's counterterrorism center. Each day, Mitchell would request permission to use enhanced interrogation techniques on Zubaydah. The source says the CIA would then forward the request to the White House, where White House counsel Alberto Gonzales would sign off on the technique. That would provide the administration's legal blessing for Mitchell to increase the pressure on

Zubaydah in the next interrogation.

We know there's cable traffic from the field back to CIA HQ every day. And we know there's a May 28, 2002, 4-page cable from HQ back to the Field that roughly corresponds to when Ali Soufan has said the torturers brought out the small box in which they eventually confined Abu Zubaydah. This may mean there's a seven-week gap between the time the harshest techniques were first okayed, and the time Condi purportedly gave the torture program its first okay on July 17, 2002. As I noted the other day, this raises the possibility that the OLC approval process was all just show, basically endorsing torture that had gone on for some time already.

Is it possible that when Bellinger and Condi asked for an OLC opinion, the CIA's torturers were already hard at work, and it's only because Bellinger asked for an opinion that they even bothered? If Gonzales was relaying daily approvals for torture directly to the torturers in the field, then why would it appear that Condi was the one who "approved" the program in mid-July? Why not Gonzales?

It's a possibility that one of Shapiro's sources is contemplating.

"I can't believe the CIA would have settled for a piece of paper from the counsel to the president," says one former government official familiar with those discussions.

"If that were true," says the former official, "then the whole legal and policy review process from April through August would have been a complete charade."

So that's the first data point: that the CIA may have started torturing, and only got an OLC

opinion to authorize it because Condi and Bellinger were inquiring into the legal basis for it.

CIA claimed to be briefing Congress when it wasn't

As I noted in a post that's supposed to go up at the Guardian today, the CIA claimed to have briefed Congress before all this happened—in those two briefings they claimed to have given Bob Graham. In addition, they repeatedly claimed to have briefed Democrats on the program, when they actually did not (I'll update when the post goes live).

That's important for two reasons. First, presumably they've got their own documentation to back up these false claims (we know they do for all but the Graham briefings, which did not make it into the CIA's list compiled after Bob Graham straightened them out). In other words, they may have been creating false documentation to be able to argue they had met their legally required briefings under the National Security Act, when in reality, no one denies CIA only informed Congress for the first time after they had started their torture program.

But then there's the partisan point. After they started briefing Congress, there were at least two times when they falsely claimed to have briefed a Democrat, in addition to the Republican: in February 2003, when they briefed Pat Roberts on waterboarding specifically, but not Jello Jay Rockefeller. And in September 2006, when for some unknown reason they decided to brief appropriators, when they briefed Bill Young but not John Murtha (and, until last week, claimed to have briefed Murtha's staffer even though they wouldn't let the staffer attend the meeting). There are other briefings where they briefed only Republicans, but these two are critical because CIA claims they briefed Democrats, but did not.

What was it that Lindsey Graham said?

If you had in your mind and your heart that you're going to disregard the law, and you're going to come up with interrogation techniques that you know to be illegal, you would not go around telling people on the other side of the aisle about it.

Well said, Lindsey.

The Administration then claimed Congress had bought off on torture

And then, backed by this false record, the Administration tried to persuade those within the Administration who were fighting the torture. As Philip Zelikow has explained,

I will tell you on the inside, when I was arguing – we were having heated arguments about these policies on the inside in the White House situation room. And the argument would often be deployed against me and my colleagues, that, well, we briefed the following members of Congress – name, name, name, name, name – and they don't have a problem with it.

So, in other words, they're using – these briefings are being used, actually, to deal with arguments on the inside of the administration.

Mind you, they used this against Zelikow in 2005 and 2006; it's not clear whether they used it earlier.

The similarity with the illegal wiretap program

This last bit—the claiming Congress approved when it didn't—is a tactic they used with the illegal wiretap program, as well. Recall what we know: On March 9 and 10, 2004, Jim Comey refused to reauthorize the illegal wiretap program. So Cheney pulled in the Gang of Eight (the first time the full Gang of Eight got briefed together), and gave them some representation of

Comey's concerns. According to Nancy Pelosi (her again), she objected to continuing the program. Nevertheless, Alberto Gonzales (him again) and Andy Card intended to use this purported support from Congress to continue the illegal program to persuade John Ashcroft—then in ICU and not legally acting as AG—to override Comey's refusal to reauthorize the program.

Most interesting, though, is the record-keeping. After Comey and Mueller made it clear they might resign over the program's reauthorization (under Gonzales' signature), George Bush ordered Gonzales to create notes of the Congressional briefing—the one that had occurred a few days earlier. Even more interesting, Gonzales went back and added one more sentence some time after that fact. And it's those records that Gonzales relied on when he claimed to Congress that the entire Gang of Eight had bought off on the program.

So: Alberto Gonzales approves a program he has no authority to approve. They create records after the fact—the content of which is contested—to claim they had Congressional approval for the authorization. And then use that purported Congressional approval (though apparently, more members of Congress approved of this than have of torture) to try to persuade those at DOJ who objected to the program.

At least they're consistent.