PRE-EMPTIVE STRIKE ON OPR REPORT: NYT MISREPRESENTS COMEY EMAILS, CLAIMS HE APPROVED TORTURE

Update: Read the Comey emails. The NYT has—IMO—grossly misrepresented the emails. Not only have they printed a story with their source's spin completely untouched, but they have ignored the real news in these emails.

The NYT has been leaked a bunch of the emails that will show up in the Office of Public Responsibility report on John Yoo, Jay Bybee, and Steven Bradbury's role in approving torture. (h/t Jason Leopold) Their story on the emails appears to be a pre-emptive (and somewhat misleading) strike on the OPR report due out shortly.

The most news-worthy of these appears to be Jim Comey, agreeing that the May 10, 2005 opinion authorizing waterboarding was "ready to go."

> Previously undisclosed Justice Department e-mail messages, interviews and newly declassified documents show that some of the lawyers, including James B. Comey, the deputy attorney general who argued repeatedly that the United States would regret using harsh methods, went along with a 2005 legal opinion asserting that the techniques used by the Central Intelligence Agency were lawful.
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> That opinion, giving the green light for all 13 C.I.A. methods, including waterboarding and up to 180 hours of sleep deprivation, "was ready to go out and I concurred," Mr. Comey wrote to a colleague in an April 27, 2005, e-mail message obtained by The New York Times.

> While signing off on the techniques, Mr. Comey in his e-mail provided a firsthand account of how he tried unsuccessfully to discourage use of the practices. He made a last-ditch effort to derail the interrogation program, urging Attorney General Alberto R. Gonzales to argue at a White House meeting in May 2005 that it was "wrong."
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> "In stark terms I explained to him what this would look like some day and what it would mean for the president and the government," Mr. Comey wrote in a May 31, 2005, e-mail message to his chief of staff, Chuck Rosenberg. He feared that a case could be made "that some of this stuff was simply awful."

Now, I say this is a misleading attempt to pre-empt the OPR report.

I say it's misleading not because I'm trying defend Comey for "going along with" this memo. But because the story buries the fact that Comey still did oppose the ~~May 30, 2005~~ May 10 techniques memo (which raises the question of why these approvals came in three different memos).

> His objections focused on a second legal opinion that authorized combinations of the methods. He expressed "grave reservations" and asked for a week to revise the memorandum, warning Mr. Gonzales that "it would come back to haunt him and the department," Mr. Comey said in a 2005 e-mail to Mr. Rosenberg.

Thus, the story obscures whether these memos address the torture statute, or compliance with CAT more generally, and oversells the terms of the debate.

Furthermore, this story presents as "news" stuff that we already knew—such as that Dan Levin signed off on waterboarding in August 2004.

> Mr. Levin, now in private practice, won public praise with a 2004 memo that opened by declaring “torture is abhorrent.” But he also wrote a letter to the C.I.A that specifically approved waterboarding in August 2004, and he drafted much of Mr. Bradbury’s lengthy May 2005 opinion authorizing the 13 methods.

We’ve known that Levin signed off on waterboarding in August 2004 for some time, not least from the SSCI narrative on torture. (It would be truly news if the NYT explained precisely why—aside from the detainee’s obesity—CIA didn’t use that approval to waterboard Hassan Ghul, as they were asking to do.) And this story includes no discussion of whether the “CIA’s proposed limitations, conditions and safeguards” included in Levin’s approval made waterboarding a lot less interesting for the interrogators.

The story also gives new details about Jack Goldsmith’s withdrawal of the Bybee One memo.

> In addition, in a previously undisclosed letter to the agency, Mr. Goldsmith put a temporary halt to waterboarding. But he left intact a secret companion memo from 2002 that actually authorized the harsh methods, leaving the C.I.A. free to use all its methods except waterboarding, including wall-slamming, face-slapping, stress positions and more.

But we knew from the SASC report that Bybee Two was in the short stack that Goldsmith found problematic, and we’ve known (obviously) that Bybee Two was never withdrawn.

In other words, my gripe with this is not that the NYT has published this as a story—but they appear to have published it as the story the leakers wanted, rather than to examine the

questions even these damning emails raise. For example, what does it mean that Dick Cheney had pushed so hard for the ~~May 30~~ May 10, 2005 techniques memo that Gonzales wouldn't even allow Comey a week to make the memo less than embarrassing?

> Mr. Gonzales told him that he was "under great pressure" from Vice President Dick Cheney to complete both memos and that President George W. Bush had asked about the memorandums, Mr. Comey recounted in one of the 2005 e-mail messages.

And what was the big rush for, anyway?

And what does it mean that CIA asked Chertoff to grant immunity in advance?

> They had asked Michael Chertoff, then head of the Justice Department's criminal division, to grant interrogators immunity in advance from prosecution for torture. Mr. Chertoff refused, but neither did he warn the agency against the methods it was proposing.

And given the use of such a phrase by others—such as Diane Beaver—why are we so sure that Chertoff didn't give implicit immunity in advance?

These are interesting new (well, some of them) details, don't get me wrong. They portray Comey, especially, in a nuanced light (but Mary's has been trying to make that point for years). But they also raise questions that are totally different than the ones that the NYT—and its source, presumably—would like to raise.