

# CONDI'S OKAY CAME AFTER OLC APPROVAL

Here's an interesting data point.

On July 13, 2002, representatives of CIA's Office of General Counsel (probably John Rizzo) met with John Bellinger, John Yoo, Michael Chertoff, Daniel Levin, and Alberto Gonzales for overview of interrogation plan. That very same day, Yoo wrote Rizzo, generally laying out the logic he would use in the later memos approving the program. He wrote:

Moreover, to establish that an individual has acted with the specific intent to inflict severe mental pain or suffering, an individual must act with specific intent, i.e., with the express purpose of causing prolonged mental harm in order for the use of any of the predicate acts to constitute torture. Specific intent can be negated by a showing of good faith. Thus, if an individual undertook any of the predicate acts for severe mental pain or suffering, but did so in the good faith belief that those acts would not cause the prisoner prolonged mental pain or suffering, he would not have acted with the specific intent necessary to establish torture.

Four days later, Condi told George Tenet the "CIA could proceed with its proposed interrogation of Abu Zubaydah ... subject to a determination of legality by OLC."

In other words, OLC had already given CIA a pretty broad okay before Condi gave Tenet the policy okay.

One more detail of interest. Note the redacted name on the second page of the letter—perhaps as long as 16 characters long. That's too long to be Jay Bybee or Pat Philbin (though it could be

Patrick Philbin). Though it's probably long enough to be either Robert Delahunty (who had partnered with Yoo on some other crazy opinions by that point) or David Addington. Or, heck, even Alberto Gonzales. Whose role in the torture approval process is DOJ trying to hide?

Update: One more detail of interest. On June 22, 2004, the same day Goldsmith, Comey, and Philbin withdrew the Bybee Memo, John Rizzo sent this earlier approval to Philbin. That seems to suggest that Philbin did not know about it and may even suggest that it wasn't in OLC's records (though Philbin, by that point, worked under Comey at DAG.