

WHERE IS THE “LEGAL PRINCIPLES” DOCUMENT?

One of the most important—but least sexy—passages revealed in yesterday’s release of the IG Report is this one, on page 22.

OGC continued to consult with DoJ as the CTC Interrogation Program and the use of EITs expanded beyond the interrogation of Abu Zubaydah. **This resulted in the production of an undated and unsigned document entitled, “Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa’ida Personnel.**²⁷ According to OGC, this analysis was fully coordinated with and drafted in substantial part by OLC. In addition to reaffirming the previous conclusions regarding the torture statute, the analysis concludes that **the federal War Crimes statute, 18 U.S.C. 2441, does not apply to Al-Qa’ida** “Because members of that-group are not entitled to prisoner of war status. The analysis adds that “the [Torture] Convention permits the use of [cruel, inhuman, or degrading treatment] in exigent circumstances, such as a national emergency or war.” It also states that the interrogation of Al-Qa’ida members does not violate the Fifth and Fourteenth Amendments because those provisions do not apply extraterritorially, nor does it violate the Eighth Amendment because it only applies to persons upon whom criminal sanctions have been imposed. Finally, the analysis states that a wide range of EITs and other techniques would not constitute conduct of the type that would be prohibited by the Fifth, Eighth, or Fourteenth Amendments even

were they to be applicable:

The use of the following techniques and of comparable, approved techniques does not violate any Federal statute or other law, where the CIA interrogators do not specifically intend to cause the detainee to undergo severe physical or mental pain or suffering (i.e., they act with the good faith belief that their conduct will not cause such pain or suffering): isolation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainees), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, **the use of diapers**, the use of harmless insects, and the water board.

According to OGC, this analysis embodies DoJ agreement that the reasoning of the classified 1 August 2002 OLC opinion extends beyond the interrogation of Abu Zubaydah and the conditions that were specified in that opinion. [my emphasis]

It's important for several reasons. First, it explains how CIA decided it was okay to torture detainees without first—as they had done with Abu Zubaydah—assuring DOJ that the detainee was truly a High Value Detainee and was "fit" to be tortured. It explains how a memo authorizing the torture of one person came to authorize an

entire regime of torture.

It also explains why the CIA continued to claim that its torture program did not violate CAT. For years, Congress kept pushing CIA to get OLC to do a real assessment of whether the torture program violated CAT's prohibition on cruel and inhuman treatment—that's why, for example, Bradbury wrote the May 30, 2005 opinion. But it turns out all this time there was an undated, half-official document declaring the Fifth, Eighth, and Fourteenth Amendment invalid for this program. And, at the same time, dismissing the War Crimes statute. Poof! One unsigned, undated document, and there go several critical laws governing detainee treatment.

Also, the document seems to answer Spencer's question: when the CIA got "prolonged diapering"—which they hadn't had time to okay for the August 1, 2002 Bybee Two memo—okayed. It appears in this document, so this may well be the "official" approval.

Now, since it's undated, we don't know when it was written. Footnote 27 says that it was attached to a document written on June 16, 2003, so it had to have been before that point. But if this document authorized the expansion of the torture program beyond just Abu Zubaydah, then it had to have been written much earlier. Even allowing for the CIA's habit of authorizing their torture after the fact, it seems likely this was written in 2002 (perhaps after people started complaining of the the treatment of al-Nashiri?).

But what does it say that such a key document was not even signed, dated, or officially released by OLC? What does it say that we have to just take OGC's word that it was written with the cooperation of OLC?

And what does it say that we have yet to see this document?

Update: Teach me to ask questions without getting to the end of the document dump. Here's a draft of this—from April 2003. Note they were

not sending this via fax. Were they trying to hide it from Yoo's bosses at DOJ? Here's the June 2003 copy referred to in the IG Report (which does appear to have been sent by fax, to Patrick Philbin).