

MORE ON CIA'S FICTIONS ABOUT EXECUTIVE BRANCH AND CONGRESSIONAL BRIEFINGS

I've been promising to return to the way that the CIA IG Report discusses the Congressional and Executive Branch approvals for the torture program. Particularly given John McCain's complaint that CIA misrepresented what he said in a torture briefing, I thought it time to do so.

A close look at the claims the IG Report made about approvals shows it:

- Repeats earlier CIA vagueness and outright lies about Congressional briefings and individual Members' responses to those briefings
- Emphasizes the centrality of DOJ to approvals, at times misleadingly
- May obscure the timing of and the participants in White House approval of the program

Now, remember, it's not clear whether these fictions are the IG's fiction, or whether John Helgeson's team was given crappy information. One other thing to keep in mind, though, is that the IG Report appears to have been drafted as early as February 24, 2004—over two months before it was ultimately released. While Cheney had a chance to review the document, DOJ did not. And Congress was only given the document

the week of June 18, 2004, when Ashcroft started balking at its content.

What follows is a paragraph by paragraph assessment of the CIA IG's claims about Congressional and Executive Branch approvals for torture.

45. At the same time that OLC was reviewing the legality of EITs in the summer of 2002, the Agency was consulting with NSC policy staff and senior Administration officials. The DCI briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.

To some degree the first sentence of the paragraph matches what appears in the SSCI Narrative, which shows the following "consultations:"

April 2002: OGC "began discussions with [Bellinger] and OLC concerning the CIA's proposed interrogation plan for Abu Zubaydah and legal restrictions on that interrogation. Bellinger briefed Condi Rice, Stephen Hadley, Alberto Gonzales, John Ashcroft, Michael Chertoff

Mid-May 2002: OGC meets with Ashcroft, Condi, Hadley, Bellinger, and Gonzales

July 13, 2002: OGC met with Bellinger, Yoo, Chertoff, Daniel Levin, Gonzales

July 17, 2002: George Tenet met with Condi, who okays torture program

Though of course, it uses a rather broad definition of "summer." I'm also curious about the "at the same time" description. The SSCI

narrative notes that OGC didn't talk to OLC until after the first consultations. And neither of these account for the alleged earlier approvals going back to at least May. Neither of these account for the meetings between the War Council (Addington, Yoo, Haynes, Rizzo, and Gonzales) going back much further. Furthermore, neither lists the July 13, 2002 letter from Yoo to Rizzo basically instructing him how to game the law. In other words, I wonder (as I have since the SSCI Narrative came out) whether the NSC-CIA discussions are really a distraction from the much earlier approvals involving other lawyers like Addington and Haynes?

Now onto the sentence describing the Congressional briefing. As I noted in this post, the IG Report's use of "fall" in both this passage and the chronology in Appendix B of the report leaves open the possibility that there were some non-September briefings that don't appear on the CIA's briefing list.

And compare the language used here—"on the use of both standard techniques and EITs"—with the language used in the famously erroneous briefing list.

Briefing on EITs including use of EITs on Abu Zubaydah, background on authorities, and a description of the particular EITs that had been employed.

Neither of them is accurate. Yet both fall short of asserting that CIA briefed Congress on which EITs were used with Abu Zubaydah. Both fall short of asserting that CIA briefed Congress that waterboarding had already been used with Abu Zubaydah. That may reflect the language in the underlying CIA documents rather than any attempt at obfuscation on the part of the IG. But for whatever reason, it uses slightly vague language to suggest Congress was fully briefed, without saying so directly.

46. In early 2003, CIA officials, at the urging of the General Counsel, continued

to inform senior Administration officials and the leadership of the Congressional Oversight Committees of the then-current status of the CTC Program. The Agency specifically wanted to ensure that these officials and the Committees continued to be aware of and approve CIA's actions. The General Counsel recalls that he spoke and met with White House Counsel and others at the NSC, as well as DoJ's Criminal Division and Office of Legal Counsel beginning in December 2002 and briefed them on the scope and breadth of the CTC's Detention and Interrogation Program.

47. Representatives of the DO, in the presence of the Director of Congressional Affairs and the General Counsel, continued to brief the leadership of the Intelligence Oversight Committees on the use of EITs and detentions in February and March 2003. The General Counsel says that none of the participants expressed any concern about the techniques or the Program.

I included these paragraphs together because they may be making a distinction between the CTC program and the use of EITs with HVDs. In which case, paragraph 46 would refer to the events in Afghanistan (including the deaths of detainees in custody), while paragraph 47 would refer to the treatment of Abu Zubaydah, al-Nashiri, and others. Though I could be totally misreading that.

In any case, note the urgency described in paragraph 46. It almost suggests that Scott Muller was pushing to make sure CIA informed the Administration of the problems with the program, particularly with respect to the deaths in Afghanistan. And note Muller's list of people he informed: Gonzales "and others at the NSC," Chertoff, and OLC. Curiously, the SSCI Narrative

says nothing about these briefings. The DOJ IG Report has no obvious reference to these briefings (there is one redacted discussion of a DOJ investigation of abuse in Afghanistan, though it doesn't appear to relate to Dilawar or Habibullah). I also wonder whether some kind of OLC document came out of this.

Then there's briefings pertaining clearly to the HVDs—and the first certifiable outright lie. As with the "fall" designation for the Congressional briefing, this uses a vague description of the timing of the briefing, which the CIA briefing list shows to have taken place on February 4 and 5, 2003. So I ask again: does the wider time frame suggest there were more briefings not reflected in the briefing list, briefings for the Republicans in March?

There is Jello Jay's apparently uncontested refutation of the claim he was briefed—he did not attend the February 4 briefing.

Then there's the Scott Muller claim that "none of the participants expressed any concern about techniques or the Program." Jane Harman would beg to differ. But for some reason, the IG reported Muller's claim that no one had.

Finally, there's no mention of what appears to have been a briefing between CIA and senior Administration officials recorded on April 10, 2003.

This is a 3-page document that describes a meeting on the CIA's interrogation program, which provided an update on the CIA's interrogations program and use of enhanced techniques. This document contains confidential communications between a CIA attorney and senior executive branch officials relating to a matter for which the officials sought legal advice.

The lack of any mention of this apparent meeting is all the more interesting given the timing—shortly following the end of Khalid

Sheikh Mohammed's most brutal treatment.

48. On 29 July 2003, the DCI and the General Counsel provided a detailed briefing to selected NSC Principals on CIA's detention and interrogation efforts involving "high value detainees," to include the expanded use of EITs.²⁸ According to a Memorandum for the Record prepared by the General Counsel following that meeting, the Attorney General confirmed that DoJ approved of the expanded use of various EITs, including multiple applications of the waterboard.²⁹ The General Counsel said he believes everyone in attendance was aware of exactly what CIA was doing with respect to detention and interrogation, and approved of the effort. According to OGC, the senior officials were again briefed regarding the CTC Program on 16 September 2003, and the Intelligence Committee leadership was briefed again in September 2003. Again, according to OGC, none at those involved in these briefings expressed any reservations about the program.

The SSCI Narrative describes the July 29 meeting this way:

In the spring of 2003, the DCI asked for a reaffirmation of the policies and practices in the interrogation program. In July 2003, according to CIA records, the NSC Principals met to discuss the interrogation techniques employed in the CIA program. According to CIA records, the DCI and the CIA's General Counsel attended a meeting with the Vice President, the National Security Adviser, the Attorney General, the Acting Assistant Attorney General for the Office of Legal Counsel, a Deputy Assistant Attorney General, the Counsel to the President, and the Legal Adviser

to the National Security Council to describe the CIA's interrogation techniques, including waterboarding. According to CIA records, at the conclusion of that meeting, the Principals reaffirmed that the CIA program was lawful and reflected administration policy.

Note the SSCI Narrative connects this meeting to something the IG Report doesn't even mention: Tenet's efforts for a reaffirmation that the torture program reflected Administration policy (which was reported to be a reaction to Bush's June 26 statement calling for torturers to be prosecuted).

I've already discussed Ashcroft's disagreement with this characterization here. Note that Ashcroft also objected to the insinuation that he had attended the September 16 briefing; the SSCI Narrative shows only Colin Powell and Rummy attending.

But those two details highlight something else: the focus on DOJ, rather than the White House, in this process. After all, if the meeting was initiated because Tenet wanted some kind of reaffirmation that torture represented the policy of the Bush Administration, then don't you think the presence of Alberto Gonzales, Condi Rice, and Dick Cheney ought to merit inclusion? Yet instead of a focus on White House involvement and policy sanction, the IG Report (as distinct from the SSCI Narrative) focuses solely on DOJ's role at the briefing.