

OPR REPORT WORKING THREAD

A great way to spend a Friday night—reading this with all my friends!

- Memorandum for the Attorney General
- OPR Final Report
- OPR 1st Draft Report
- OPR 2nd Draft Report
- Yoo Response to OPR 2nd Draft
- Yoo Response to OPR Final Draft
- Bybee Response to OPR 2nd Draft
- Bybee Response to OPR Final Draft

I'm working on the First Draft.

PDF 8: when OPR first asked for emails, they were told that Yoo's and Philbin's had been deleted. They later got those emails.

PDF 9: Rizzo refused to meet with OPR until after his confirmation hearing in 2007.

PDF 10: The people who refused to be interviewed:

- At least 3 CTC lawyers
- Ashcroft
- Addington
- Flanigan

PDF10: There WAS no classified annex to Bush's July 2007 EO on torture—just Bradbury's memo accompanying it. But that was supposed to be the WH writing down its policy guidance for torture!

PDF11: They didn't tell OPR about the Combined

and CAT memos until 2007. OPR first got them August 29, 2007.

PDF11: "we cannot say with certainty that the documents provided to us by the CIA included all the relevant documents."

PDF12: Is the redaction in the middle of the page where they explain why they don't think Bradbury screwed up? (Actually, they seem to punt with a paragraph on PDF13 arguing for more review.)

PDF 14: Did we know that the OLC memo on warrantless wiretap referred to in the footnote was withdrawn/ Or is that the Fourth Amendment one?

PDF 15 and 16 must include descriptions of CIA's background in interrogation—things like MKULTRA. It also must include at least one paragraph showing CIA should have know the legal restrictions on torture (perhaps earlier guidelines prohibiting it after they "closed down" the SOA program.

PDF17: Note: there's no mention of Binyam Mohamed's torture, which we know started at the same time or before Abu Zubaydah's.

PDF18: Note the footnote—this report takes the DOJ IG report as proof that they were torturing before they had the memo.

PDF 20: Note the reference to diapers (something Spencer has written a lot on). Then there are redactions that don't explain where the diapers went.

PDF21: There's a 12th technique that they are hiding. Is it the use of drugs?

PDF22: Bellinger told Yoo not to tell State about the torture. I guess he was not the hero on torture he has made himself out to be. Also note—there were MORE people briefed on torture at the beginning than were briefed on Cheney's illegal wiretap program.

PDF23: Yoo formally began work on the torture

memo on April 11. But he had already done research by that point. Note if Yoo's partner researched torture prosecutions, she should have found the waterboarding prosecution in TX. Note, Yoo's research was discussed at NSC meeting on same day (April 16) Bruce Jessen first circulated his torture plan. Referring to CIA MFRs (the same thing on which the Congress breifing stuff is based):

we recognize that those reports reflect the agency's view of the proceedings and are not necessarily accurate accounts.

PDF24: The CIA MFR claims that Yoo said his research (meaning his partner's) had found "there were no reported decisions interpreting the law [Torture Statute]"

PDF27: Yoo's partner on Bybee Memo is the one who came up with the medical definition of "severe" for torture.

PDF27: Note the chronology of the meetings: Chertoff by himself, Gonzales and probably Addington and Flanigan, and then everyone else. At the last meeting they were also briefed on torture techniques. Also, the July 12 draft precedes by one day a "how to break the law" letter from Yoo.

PDF29: Note there's a document referred to that is also discussed in the footnote. The redacted section must be a discussion of the July 13 meeting, at which torture techniques were discussed. So it's likely that the document—which CIA let OPR look at but not keep—was probably the torture techniques document.

PDF30: Wow. So Yoo send the "how to break the law" letter, drafted on July 13, on July 15. Then Chertoff instructs Yoo to send a letter saying OLC won't do letters declining proescution before teh fact. But Yoo NEVER SENDS it to CIA.

PDF31: Note the timeline: Yoo meets with

Gonzales and probably Addington and Flanigan on July 16, after Ashcroft has already raised the idea of "advance pardon." No one will say what was discussed at this meeting. But the next day Yoo "forgets" to send letter deny advance declination to CIA.

PDF 32: Yoo, on putting in the get out of jail free card; "They want it in there."

PDF 36-37: Confirmation of what documents they sent from JPRA (which we knew from the SASC report). Note there's also a psych report sent a day or two earlier we may not have seen. Jeebus!! They didn't start the techniques memo until July 26, 2002!!! Before that they were going to do only oral approval for this. Note that Gonzales said his comments on the draft memos would sometimes go through Flanigan or Addington.

PDF 39: Rizzo: "Couldn't pick [Bybee] out in a lineup." This suggests that Bybee may have gotten involved as late as July 26.

PDF41: As they later would with the Bradbury memos, WH was pressuring OLC to get the memos out as quickly as possible.

PDF42: Seems to suggest that Yoo's sidekick informed him that a cable--presumably sending out OLC approval--got sent out, presumably with torture approval. Note that they faxed the Bybee Two (techniques) memo but messaged the Bybee One memo to CIA, suggesting they may have used Bybee Two immediately (suggesting the waterboarding may have been in the first days of August).

PDF 46: At least in what is unclassified, it appears that OPR didn't question whether Yoo had reason to doubt what CIA was telling him. That surprises me.

PDF 49: Note the big redaction here. There have long been questions about whether Addington and Haynes pushed the Gitmo folks during their September 24 (25?) field trip to adopt techniques or language from Bybee One and Two. If they did, it would appear in this redacted

section.

PDF 51: Note the redacted section in footnote 47. That must be a modification of what the description of torture techniques was.

PDF 53: In the "load of shite" department, when Yoo started working on the Yoo memo (for DOD) he pretended that DOD wasn't allowed to know what CIA was doing. But as the OPR report notes, Yoo probably sent DOD copy of the memos, Yoo got info from DOD to write them memos, and Haynes and Rummy were probably briefed in January 2003 on the torture program. So they knew. So why was he pretending they didn't know? To protect the JSOC guys doing torture? Or to protect Haynes, who was part of the War Counsel (note, OPR thus far makes no mention of war council). Q: Is the DOD memo where Bradbury becomes involved in torture docs? The redaction almost fits.

PDF 56: Muller gets a copy of the DOD memo on torture—just before they start torturing KSM. That appears to be his CYA to make sure torture was still okay.

PDF 57: Yoo actually convinced Bybee—confirmed but not sworn—not to sign DOD memo. Maybe because he was hoping for favorable judge in case a Jeppsen trial came before the 9th?

PDF 60: The OPR report appears to transcribe from a redacted section of the CIA IG Report, describing a bit about the makeup of torture teams, and specifying that the team was led by two contract psych/interrogators (Mitchell and Jessen). This is also language that is used in the CIA IG Report on why they went beyond guidelines on waterboarding.

PDF61: If one child dies and I find out you knew something about it I will slit your throat.

PDF 62: The first definitive date on al-Nashiri—brought to black site on November 15, 2002.

PDF 64: Note the way they refer to KSM "a high ranking al Qaeda official" with the way they

refer to al-Nashiri ("a second prisoner") and Abu Zubaydah (the description is redacted). OPR didn't deal with the fact that CIA was only supposed to torture high-ranking AQ people and AZ definitely didn't, and al-N may not have, qualified.

Page 67: On January 24, 2003, CIA gave DOJ a heads up on torture. According to Rizzo, Chertoff seems to have been more interested in the threat with the gun on al-Nashiri than one of the detainee deaths (presumably one of the Afghan murders).

PDF 76: Note that Muller tells Goldsmith the Legal Principles were written specifically for use with the OIG report. Also note the footnote modifies the big redacted paragraph specifically in context of Yoo leaving.

PDF 78: The June 16, 2003 MFR is CIA, and is almost certainly something referenced by CIA IG report—where OGC makes its argument that the Legal Principles doc (here, called the bullets) was an OLC doc.

PDF 78: Note the letter in response to Pat Leahy—which he sent to Condi—was signed by Jim Haynes, not Condi.

PDF 79: CIA summary of letter to Pat Leahy notes that US may define cruel and unusual differently than other countries

PDF 79: Gonzales had questioned whether KSM's waterboard could be viewed as excessive

PDF 80: HUGE redactions in the "CIA request for reaffirmation" section. This was when CIA was asking WH for something in writing. So they're not protecting ops here, they're protecting BushCo.

PDF 84: Makes it clear that it was the warrantless wiretap program that made Goldsmith bug out and ask Philbin for the other crazy-ass Yoo opinions. And after, in December 2003, Goldsmith told Haynes to stop using the Yoo memo for torture, he continued to find the NSA

program more troublesome.

PDF85: DOD asks to use one of the more controversial techniques in March 2004. Goldsmith says no. This would have been when they had Hasan Ghul in custody and—almost certainly—in DOD custody. They later put Ghul in CIA custody and used techniques later approved in the May 2005 Techniques memo on him. Those four techniques [see PDF50] are: 1) Threats of death to detainee and his family, 2) Exposing detainee to cold water, 3) Waterboarding, 4) Light physical contact. The May 2005 opinion approved belly slaps and water dousing, so either of those could have been used and had to be retroactively approved.

PDF 86: Jeebus. Check out this timing. DOD asks Goldsmith in early March 2004 to let them use one of the four extreme measures with a detainee. Goldsmith doesn't want to let them. He goes to COMey's house on March 13, 2004 to talk him through it. That was, of course, 3 days after the hospital confrontation (which both Goldsmith and Philbin knew about) and just after everyone threatened to quit.

PDF 86: note that the footnote to the discussion of Muller's request for reaffirmation is redacted. That's interesting partly bc we know the "bullet points" (Legal Principles) were not affirmed by OLC, and we know that CIA was trying to authorize the program that was in legal trouble.

PDF 88: CIA OGC and OLC originally were going to submit joint comments to CIA IG Report.

PDF 88: Yoo gave Haynes advice on 12/2/02 about a particular detainee, probably al-Qahtani.

PDF 89: OPR lists the sequential Goldsmith footnotes trashing Yoo's memos> Worth a read.

PDF 90: Note reference to March 13, 2002 OLC opinion. Says it contradicts Yoo's opinions.

PDF 90: Bradbury on Bybee One memo: "Sombbody should have exercised some adult leadership."

PDF 97: Levin was the one who pushed the jurisdictional exception for CAT on CIA, bc he believed there was no way it could qualify under CAT.

PDF 102: Levin thinks Gonzales didn't like him because when he was at FBI, he read some senior FBI people into the warrantless wiretap program.

PDF 102: Gonzales makes the offer of USA CD CA to Levin in January 2005.

PDF 103: Bradbury claimed Levin was the one who started on the Combined memo.

PDF 111; Says Comey's objection to Combined was that it was hypothetical. But I don't think that's it. It's taht it refers—but doesn't' detail—teh treatment of one detainee. The OPR report doesn't discuss who these opinions are written to solve.

PDF 113: Bradbury claims Comey's objections to Combined were "optics."

PDF 117: Comey says he was unaware of the CAT memo. Huh? he was at WH on it the day before it was approved.

PDF 118: Suggests that Cheney and Addington made early efforts to persuade cCongress, but not the later ones.

PDF 123: Note the way they describe waterboarding. They "dropped it" (presuming it was in place until 2007) because McCain ojected. Was it in DOD portfolio before that?

PDF 123: Note the OPR's repeated reference tot eh "Effectiveness Memo," Which I suspect was written for the purpose of backing up OLC docs.

PDF137: In one of the earlier drafts of the Bybee One memo, Yoo apparently specified that treatment would have to rise to level of breaking bones to be torture.

PDF143-144: The Bybee One memo included a sentence saying you could threaten the lives of all the co-prisoners if you were doing so to get information.

PDF 153 As noted in comments earlier, Yoo asked Koester if there was language in Israel that supported their conclusion on torture, and she said, "unfortunately, no."

PDF 163: Bybee explicitly references teh "ticking time bomb" scenario in discussion of necessity defense.

PDF165: Ding ding ding: "none of teh EITs under consideration were designed or intended to produce immediate results. Rather, the goal of the CIA program was to gradually condition the detainee in order to break down hisresistance to interrogation."

PDF 176: The Report states it has no idea why they did Bybee One, since Bybee Two gave CIA everything it needed to engage in torture. Rizzo agreed. Interestingly, BushCo still went to the trouble of replacing Bybee One with the Levin memo.

PDF 178: Note the reference to mock burial. This must be the technique redacted completely, which was originally proposed but not included.

PDF 178: Rizzo told OPR that there was never any doubt that waterboarding would be approved. On July 24, 2002, CIA told OLC that w/o waterboarding the program would be 50% effective.

PDF 191: Note they redacted a paragraph on the torture program's failures.