

GOSS AND HARMAN'S JULY 13, 2004 BRIEFING ON THE IG REPORT

The Ghost Detainee FOIA (for more background see [here](#), [here](#), and [here](#)) also has a Memorandum for the Record from CIA's briefing for Porter Goss and Jane Harman on the CIA's IG Report on July 13, 2004.

The MFR is interesting for the details it gives of how Harman and Goss responded to news of the CIA IG Report—and with it, news of the abuses of the torture program.

None of the detainees who died had been subjected to enhanced interrogation

The MFR transcribes a claim from CIA IG John Helgerson that “none of the detainees who had died had been subjected to the enhanced interrogation techniques.”

Helgerson must be playing word games here, because by the time he states this Habibullah and Dilawar had died from a combination of sleep deprivation and stress positions and other abuse. Manadel al-Janabi had been crucified by stress position during interrogation.

So what Helgerson must mean is that none of the High Value Detainees died during torture; others who were tortured did die.

Confirming previously redacted details of the IG Report

The MFR confirms two things we already knew about the CIA IG Report, but which had been redacted when the report came out last year. First, there was IG John Helgerson's concerns about whether the program violated the Convention Against Torture:

The IG indicated that the 1 August memo did not address Article 16 of the Convention Against Torture and Other

Cruel, Inhuman, or Degrading Treatment or Punishment. The article 16 that [sic] required signatory States [sic] to prevent in any territory subject to their jurisdiction acts of cruel, inhuman and degrading treatment of punishment not amounting to torture. The question was whether CIA's use of the enhanced techniques would transgress U.S. obligations under Article 16.

The MFR also spells out the IG's concerns about the torture program as practiced.

The IG indicated he was also bothered in that the DOJ 1 August document did not address interrogations as we carried them out.

From here, Helgerson's briefing goes into detainee deaths and waterboarding—and from there into a discussion of problems in the guidance sent out over cables.

[Helgerson] said that three people had been interrogated with the waterboard. On one, the IG felt it had been used excessively, beyond what the IG thought was the agreement with DOJ. Khalid Sheikh Mohammed (KSM) got 183 applications [redacted] The IG indicated the guidance in cables sent to the field evolved over time and that the guidance did not get to everybody who was involved in debriefing interrogations.

Aside from the impression the IG report gives that Helgerson also found Abu Zubaydah's waterboarding excessive (not least because officials at Langley ordered up another sessions after he was already compliant), I wonder whether he claims that the waterboarding itself, or the torture program more generally, got out of hand because the cables started going crazy?

Jane Harman still looking for a Presidential

Finding

I have long argued that Jane Harman's February 10, 2003 letter to Scott Muller, with its inquiry as to whether the President had approved of the torture policy, was an attempt to understand whether the President had issued a Finding to cover the torture program.

In particular, I would like to know whether the most senior levels of the White House have determined that these practices are consistent with the principles and policies of the United States. Have enhanced techniques been authorized and approved by the President?

Almost a year and a half later, Harman still seems to be seeking a Presidential Finding. The MFR records,

Ms. Harman asked when did we begin using "enhanced techniques." DDO [Jim Pavitt] responded that it began with Abu Zubayda.

[snip]

Rep. Harman noted that the [redacted] did not specify interrogations and only authorized capture and detention. She asked whether we had questioned detainees before the [redacted]/ The GC said yes, but no enhanced techniques had been used before Abu Zubaydah and there was [two lines redacted] Abu Zubayda and enhanced techniques which started in August 2002. In August 2002 there was a lengthy unclassified opinion by DOJ generally discussing interrogations. In a separate and classified opinion addressed to John Rizzo, OGC, DOJ concluded the ten specific CIA techniques, which included the waterboard, were legal for use with Abu Zubayda.

We can assume the first redaction refers to the Presidential Authorization because we know that it did only authorize CIA to capture and detain al Qaeda figures.

While we can't be sure, Harman seems to have figured out a few details. First, the September 17, 2001 Presidential Finding that had authorized the detention program in its first years could not be said to authorize torture. Then, twice during the briefing, Harman seems to be honing in on the obvious question: did the memo precede the beginning of the torture? When first asked, Pavitt answers shrewdly: it all began with Abu Zubaydah. But then she directly asks whether the torture of Abu Zubaydah preceded the torture memos, which we now know it did. There is a redacted passage, so we don't know how the exchange ended. But curiously enough, CIA respond by bringing up the torture memos which—if Harman read the IG Report—she should already know about. In any case, it seems clear that Harman had legitimate doubts about whether the torture was legal. I also wonder whether she suspected the earlier approval direct from the White House?