

MICHAEL HAYDEN LIED TO SSCI ON APRIL 12, 2007

The latest Ghost Detainee FOIA materials [long pdf] (for a general overview see this post) prove that Michael Hayden lied to the Senate on April 12, 2007.

One of the things included in this packet is a heavily redacted transcript of Hayden's classified briefing to the Senate Intelligence Committee (SSCI) on April 12, 2007. There's a lot that is dubious in this briefing, but these five paragraphs are key:

While FBI and CIA continued unsuccessfully to try to glean information from Abu Zubaydah using established US Government interrogation techniques, all of those involved were mindful that the perpetrators of the 11 September attacks were still at large and, according to available intelligence reportedly, were actively working to attack the US Homeland again. CIA also knew from its intelligence holdings that Abu Zubaydah was withholding information that could help us track down al-Qa'ida leaders and prevent attacks. As a result, CIA began to develop its own interrogation program, keeping in mind at all times that any new interrogation techniques must comply with US law and US international obligations under the 1984 UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

A handful of techniques were developed for potential use; these techniques are effective, safe, and do not violate applicable US laws or treaty obligations. In August 2002, CIA began using these few and lawful interrogation

techniques in the interrogation of Abu Zubaydah. As stated by the President in his speech on 6 September 2006, "It became clear that he (Abu Zubaydah) had received training on how to resist interrogation. And so the CIA used an alternative set of procedures ... the procedures were tough, and they were safe, and lawful, and necessary."

Prior to using any new technique on Abu Zubaydah, CIA sought and obtained from the Department of Justice an opinion confirming that none of these new techniques violated US statutes prohibiting torture or US obligations under the UN Convention Against Torture.

As CIA's efforts to implement these authorities got underway in 2002, the majority and minority leaders of the Senate, the Speaker and the minority leader of the House, and the chairs and ranking members of the intelligence committees were fully briefed on the interrogation procedures.

After the use of these techniques, Abu Zubaydah became one of our most important sources of intelligence on al-Qa'ida. [my emphasis]

There's plenty to dispute in this statement. We know FBI had success in gathering information from Abu Zubaydah. We know CIA turned out to be wrong about the purported troves of information Abu Zubaydah had. We know that Mitchell and Jessen had already been engaged to develop their torture program before CIA declared traditional interrogation to be unusable. We know OLC really didn't consider whether CIA's torture program violated CAT for the Bybee Memos. It is indefensible to argue that Abu Zubaydah "became one of our most important sources of intelligence on al-Qa'ida" given that only 10 pieces of intelligence from Abu Zubaydah proved useful enough to appear in the 9/11 report.

By April 12, 2007, Michael Hayden had to have known that. But I can't prove that.

It's even harder to fathom that he didn't know his assertion that "In August 2002, CIA began using these [torture] techniques" to be false. Or his claim that "prior to using any new technique on Abu Zubaydah, CIA sought and obtained ... an opinion confirming that none of these new techniques violated [the law and treaty obligations]." After all, even if he didn't review the cables and the FBI discussions making it clear that the torture started long before August 1, in February 2007, Hayden received the ICRC report making it clear that Abu Zubaydah's torture began weeks, not months, after he was captured.

But who knows? Maybe CIA kept Hayden completely in the dark about the many falsehoods he was telling Congress. Maybe he really didn't know that CIA tortured for a few months (reportedly, with the okay from the White House), and only then got the written approval from OLC.

But this assertion ... this assertion we know Michael Hayden knew to be false.

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That's because the day before Hayden testified at the SSCI hearing, in a memo addressed to him entitled "Information for 12 April SSCI Hearing," CIA laid out all the briefings they had done on torture and rendition. And CIA's own records—records Hayden received the day before he made these statements in preparation for the hearing—show that:

- Tom Daschle, Senate Majority

Leader from the time the torture began until the end of 2002, and Minority Leader until the end of 2004, was never briefed on the torture program.

- Trent Lott, Senate Minority Leader until the end of 2003, was never briefed on the torture program while in leadership (though as a member of SSCI, he was briefed on the torture program on March 15, 2006).
- Denny Hastert, Speaker of the House through the end of 2006, was not briefed on any aspect of the program until July 1, 2005.
- Dick Gephardt, House Minority Leader through the end of 2003 (and therefore, through the worst torture) was never briefed on the program.
- Harry Reid, Senate Minority Leader from 2005 until 2007 and Senate Majority Leader thereafter, was not briefed until September 6, 2006, when Bush made the program public.
- Though Nancy Pelosi had an (incomplete) briefing as House Intelligence Ranking Member in 2002, she did not have a briefing as House

Minority Leader.

- Just Bill Frist, who was first briefed in July 2004, seven months after he took over as Senate Majority Leader, was briefed in timely fashion at all.

The Intelligence Committee heads were briefed, however inadequately. But with the exception of Bill Frist, the CIA barely briefed Congressional Leadership at all.

Update: William Ockham added this very good additional proof:

Take a look at pg. 40. It's a MFR (Memorandum For the Record) from the CIA briefing of the Senate Appropriations Subcommittee on Defense (SAC/DEF). It's from May 10, 2004 (i.e. damage control after Abu Ghraib). The first paragraph talks about activities in Iraq (why that's redacted is beyond me). The second paragraph is about the black sites. It says:

He [CIA GC Scott Muller] indicated tht the Chairman and Ranking Members of the Senate and House Intelligence Committees had been briefed as well as staff directors, but those are the only Members/staff of Congress that had been briefed.

There it is in black and white.