

SHORTER GOP INTELLIGENCE: “OVERSIGHT’S OUT FOR SUMMER!”

I’m just now getting around to the GOP rebuttal to the Senate Report. While it does raise a few decent points, it engages in a whole slew of the kind of word games the Bush Administration used to hide torture in the first place (I honestly would love to read a serious study of this whole project as an epistemological exercise).

Thus far, however, I most adore this paragraph on Congressional oversight.

The Study claims, “[t]he CIA did not brief the Senate Intelligence Committee leadership on the CIA’s enhanced interrogation techniques until September 2002, after the techniques had been approved and used.”⁸⁸ We found that the CIA provided information to the Committee in hearings, briefings, and notifications beginning shortly after the signing of the Memorandum of Notification (MON) on September 17, 2001. The Study’s own review of the CIA’s representations to Congress cites CIA hearing testimony from November 7, 2001, discussing the uncertainty in the boundaries on interrogation techniques.⁸⁹ The Study also cites additional discussions between staff and CIA lawyers in February 2002.⁹⁰ The Study seems to fault the CIA for not briefing the Committee leadership until after the enhanced interrogation techniques had been approved and used. However, the use of DOJ-approved enhanced interrogation techniques began during the congressional recess period in August,

an important fact that the Study conveniently omitted.⁹² The CIA briefed HPSCI leadership on September 4, 2002. SSCI leadership received the same briefing on September 27, 2002.⁹³

I am somewhat sympathetic to the first claim. As it notes, at a briefing for what appears to be the Senators (as opposed to staff) on November 7, 2001, Deputy Director of Operations said something that should have set off alarm bells.

Deputy Director of Operations (DDO) James Pavitt assured the Committee that it would be informed of each individual who entered CIA custody. Pavitt disavowed the use of torture against detainees while stating that the boundaries on the use of interrogation techniques were uncertain—specifically in the case of having to identify the location of a hidden nuclear weapon.²⁴⁴⁷

²⁴⁴⁷ “We’re not going to engage in torture. But, that said, how do I deal with somebody I know may know right now that there is a nuclear weapon somewhere in the United States that is going to be detonated tomorrow, and I’ve got the guy who I know built it and hid it? I don’t know the answer to that.” (See transcript of Senate Select Committee on Intelligence MON briefing, November 7, 2001 (DTS #2002-0611);

Whoa!

Pavitt effectively said, just as the government started to round up people like Ibn Sheikh al-Libi in Afghanistan, “we’re not going to torture but then again maybe we will.” And while it is crystal clear he failed to meet the terms he laid out – Congress was not informed about each detainee, there was never a detainee in custody who had set a nuclear bomb nor even a ticking time bomb scenario, much less Abu Zubaydah, who

was put on ice for over a month before the worst of the torture – his contemplation of using torture in case of a ticking time bomb should have been the moment for Congress to say, “Whoa! Stop!”

There’s no reason to believe the February briefing discussed the torture.

Which brings us to the September briefings.

Now, first of all, elsewhere in their rebuttal, the GOP note that Abu Zubaydah was subjected to torture in April (largely, but not entirely, sleep deprivation). They make much – some of it justified – of the Report for not dealing with this as torture. But here, they adopt the same approach the Report did and ignore that torture and point out that the DOJ-approved torture (that is, the torture that had some authorization beyond the Memorandum of Notification, rather than the torture that relied exclusively on it) started during Congressional recess, so whatever was the poor CIA to do about Richard Shelby and Bob Graham being on vacation? (FWIW, Graham remained actively involved in the Joint Inquiry into 9/11 during that period; it’s when he first started getting incensed about Saudi Arabia’s role in the attack.)

Schools out for summer!

Except it wasn’t out.

JULY						
Sun	M	Tu	W	Th	F	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			
AUGUST						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

As the official schedule from the period makes clear, the Senate met (marked by strike-through) on August 1, the day the torture memos were signed. Under the National Security Act, the Gang of Four, at least, are supposed to be briefed *before* a covert op. Clearly the Executive knew enough about what they planned to do with Abu Zubaydah on August 1 to be able to brief it before they started on August 4. (In case you're wondering, the Senate was also in session in April to be briefed.)

I am, however, rather interested that the GOP is adopting the argument that CIA had to wait until September to roll out a new product, just as Andy Card was doing with the Iraq War at that same time. Especially given the way both Nancy Pelosi and Bob Graham have noted that the Executive was lying about both in that same period.

Finally, there's the final claim – that Bob Graham and Richard Shelby got the same briefing that Nancy Pelosi and Porter Goss did. The claim commits another of the crimes the rebuttal accuses the Report of – insisting you can't find out what happened at a briefing without interviewing the participants, which the GOP did no more than the SSCI staffers did.

But from the available evidence, we can be pretty sure Graham and Shelby did not get the same briefing that Pelosi and Goss did.

As I've laid out, someone(s) in the Pelosi and Goss briefing noted that the torture described in the briefing – which CIA had already done, though they didn't tell Pelosi and Goss that – would be illegal in another country. The next day, CIA ramped up discussions of destroying the torture tapes that depicted that illegal torture. The next, Jose Rodriguez and a lawyer altered their record of the briefing to take out that reference to illegality. And, for some reason, the Graham and Shelby briefing, which had been scheduled for September 9, got postponed until the end of the month. Rodriguez did not attend the SSCI briefing, as he had the

HPSCI one. And it appears to have been held in less secure space.

And while I've only interviewed half the people who attended those briefings, there does seem to be abundant evidence they were different. Not only that they were different, but different because of the reaction someone in the HPSCI briefing had.

Whatever. I guess it's nice to know that departing Vice Chair Saxby Chambliss and rising Chair Richard Burr both think the CIA should get none of the oversight legally required during recess.