

DID OLC CHANGE THE UNDERSTANDING OF RIOT INVESTIGATIONS TO TIME W/RNC CONVENTION?

There's an interesting detail in the IG Report on FBI's investigations of peace groups that suggests FBI was asking OLC for an interpretation of the approval required before conducting a riot-related investigation.

The Attorney General's Guidelines on "Reporting on Civil Disorders and Demonstrations" were in effect from 1976 until they were repealed and partially incorporated into the 2008 Guidelines. Two FBI OGC attorneys we interviewed told us it was their interpretation that the Guidelines required the FBI to request Attorney General approval to open an investigation under the federal riot statute, 18 USC 2101, and the civil disorders statute, 18 USC 231.

[snip]

In July 2008 the DOJ Office of Legal Counsel (OLC) sent an informal opinion to OGC that stated that the Demonstration Guidelines do not require Attorney General approval to open an investigation under the riot statute or the civil disorders statute. However the OLC attorney also said that "as a prudential matter" the FBI should consider requesting such approval before initiating investigations under these statutes. The 2008 Attorney General's Guidelines repealed the Demonstration Guidelines and requires the approval of the Attorney General, Deputy Attorney General, or the Assistant Attorney

General for the Criminal Division only
when the FBI collects information
relating to actual or threatened
disorders to assist the President in
determining whether, pursuant to 10 USC
331-33, "use of armed forces or militia
is required and how a decision to commit
troops should be implemented."

This footnote is presented in the context of an investigation pertaining to the FTAA meeting in Miami in 2003, but it's the changes in interpretation in 2008 that I'm most interested in.

This footnote seems to suggest that in July 2008, in the weeks before the Presidential Convention season, someone in OLC lowered the bar for starting an investigation into a potential riot. That's all the more interesting, given the liberal use of the riot statute Ramsey County and FBI used in preemptively arresting people leading up to the RNC Convention in September of 2008.

In any case, the lowered standard for investigating people for planning riots appears to be the rule now, as the government only needs to get higher approval for riot investigations if they plan to militarize the response.