

THE FORGOTTEN OPR REPORT EXPOSING THE WHITE HOUSE ROLE IN TORTURE

McClatchy reports today that the Senate Intelligence



Report will include no details on the White House role in torture.

The Senate Intelligence Committee report also didn't examine the responsibility of top Bush administration lawyers in crafting the legal framework that permitted the CIA to use simulated drowning called waterboarding and other interrogation methods widely described as torture, McClatchy has learned.

"It does not look at the Bush administration's lawyers to see if they were trying to literally do an end run around justice and the law," the person said.

McClatchy's story is interesting, in part, because I had heard that the report was going to admit what has been in the public domain for years: the torture program, contrary to almost all reporting, was authorized by Presidential finding, not primarily by the memos that garner all the attention.

If the Torture Report is no longer going to confirm that, it is far bigger news than McClatchy has conveyed. It would mean someone –

presumably the White House! (though remember the Finding's author, Cofer Black, was involved in reviewing the document) – had won concessions in the declassification discussions to hide the role of President Bush in personally authorizing torture.

That would be consistent with President Obama's rather remarkable efforts to keep a short mention of the September 17, 2001 Gloves Come Off Memorandum of Notification suppressed in ACLU's torture FOIA (something that's in the public record, but which I have been the only one to report).

But if President Obama's White House has, a second time, intervened to prevent public confirmation that the President authorized torture, we really ought to start demanding to know why that's the case. Remember when the 2nd Circuit backed White House efforts to keep mention of the MON suppressed, the White House said it was still using the MON.

The other reason I find McClatchy's report curious is because it leaves something utterly central out of its narrative.

As Katherine Hawkins noted yesterday, McClatchy missed a key detail in the chronology of when and how Republicans backed out of the torture review.

Obama DOJ investigation into torture is not "prior" to SSCI report. Launched after SSCI, & is reason GOP withdraws

But there's one more part of that chronology – one McClatchy might actually review if it wants the things it says it wants: the Office of Public Responsibility report into OLC lawyers' role in the torture memos. Reporting in 2009 made it clear that Eric Holder launched the John Durham investigation in response to reading the OPR Report. So the chronology goes OPR Report, Durham investigation, GOP withdraws from SSCI Torture Report which (McClatchy argues) is when the Democrats could have turned and pushed to

get documents implicating Bush White House figures.

While both David Addington and Tim Flanigan refused to be interviewed for the OPR report, it made it clear (especially Jay Bybee and John Yoo's rebuttals) that both had had a direct role in setting up the legal loopholes CIA used to conduct torture. Between that and other public (largely unreported by anyone but me) documents, it is fairly clear that in response to concerns raised around July 10, 2002, CIA tried to get DOJ to give "advance" declination of prosecution (though for conduct that surely had already occurred). On July 13, Michael Chertoff refused, probably because Ali Soufan had already raised concerns about the conduct (his concerns probably relate to the use of mock burial) to give advance declination for torture. This led John Yoo to freelance a July 13, 2002 fax laying out how CIA could avoid accountability; that appears to be what Jonathan Fredman relied on in his advice to the torturers, not the more famous Bybee Memos. Nevertheless, at a July 16, 2002 meeting at the White House, it was decided (Yoo and Addington differ, it appears, on who did the deciding, but it is a rock solid bet that Addington did) that the Bybee Memo would include Commander of Chief language on how to avoid prosecution.

There are a number of other moments in the history of the program where White House responsibility is clear. But at that moment on July 16, 2002, David Addington got John Yoo to provide legal cover for anything the President ordered CIA do; he did so, of course, after CIA had been torturing for months on Presidential orders.

The answers to many of the questions McClatchy says have gone unanswered are sitting right there in the OPR report. And those answers are crucial to understanding the dance over declassification going on right now.

Aside from whatever else the Torture Report is, it is also a report that dodges the underlying

power structure, in which the President orders the CIA to break the law and later ensures CIA avoids any accountability for doing so. At some point in this Torture Report process – fairly recently too! – Democrats seemed interested in exposing that dynamic, a dynamic President Obama has benefitted from at least as much as Bush did, going so far as to permit him to have CIA kill a US citizen with no due process. (That's probably why Leon Panetta told some fibs in his memoir on this point.)

Ultimately, we're never going to rein in CIA until we expose the mutual embrace of complicity the White House and CIA repeatedly rely on. Now it looks like the Senate Intelligence Committee has – in bipartisan fashion – decided to back off doing so here.