

INADEQUATE BRIEFING ON THE DRONE PROGRAM SHOWS CONGRESS HASN'T FIXED THE GLOVES COME OFF MON

I need to finish my series (post 1, post 2, post 3, post 4, post 5, post 6) on the Obama Administration's efforts to hide what I've dubbed the "Gloves Come Off" Memorandum of Notification. As I described, the MON purportedly gave CIA authority to do a whole slew of things, but left it up to the CIA to decide how to implement the programs Bush authorized. And rather than giving the Intelligence Committees written notification of the details of the programs, CIA instead gave just the Gang of Four deceptive briefings on the programs, which not only gave a misleading sense of the programs, but also prevented Congress from being able to limit the programs by refusing to fund the activities.

Yet, as MadDog and I were discussing in the comments to this post, these aspects of the MON set up did not entirely elude the attention of Congressional overseers. In fact, the very first Democrat to be briefed that torture had been used (remember, Pelosi got briefed it might be used prospectively) asked questions that went to the heart of the problem with the structure of the MON.

The CIA won't tell Jane Harman whether the President approved torture from a policy standpoint

Jane Harman was first briefed on the torture program, with Porter Goss, on February 5, 2003. We don't actually know what transpired in that briefing because CIA never finalized a formal record of the briefing. But five days after the

briefing, Harman wrote a letter to CIA General Counsel Scott Muller. In addition to using a word for the torture program CIA has redacted and objecting to the destruction of the torture tapes, Harman asked questions that should have elicited a response revealing the Gloves Come Off MON was what authorized the torture program.

It is also the case, however, that what was described raises profound policy questions and I am concerned about whether these have been as rigorously examined as the legal questions. I would like to know what kind of policy review took place and what questions were examined. 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?

The whole point of a MON, after all, was to get the President on the record asserting that the programs authorized by it are “necessary to support identifiable foreign policy objectives of the United States and [are] important to the national security of the United States.” Here, Harman was asking whether the President was part of a policy review on torture.

Just over a week after Harman sent this letter, the CIA met with the White House to decide how to respond to Harman’s letter.

Now, granted, Harman’s question did not explicitly ask about a MON. But the CIA did not even answer the question she did ask. Muller basically told her policy had “been addressed within the Executive Branch” without saying anything about Bush’s role in it.

While I do not think it appropriate for me to comment on issues that are a matter of policy, much less the nature

and extent of Executive Branch policy deliberations, I think it would be fair to assume that policy as well as legal matters have been addressed within the Executive Branch.

Kudos to Harman for actually asking questions. But at this point, she should have known that there was something funky about the legally required MON for the torture program.

Two years later, she was still trying to get answers about the MON. In her third briefing on torture (PDF 29-31; see also this post)—on July 13, 2004, which was almost 3 weeks after Harman should have received the Inspector General Report—Muller first claimed that the legal foundation for the torture program were the Bybee Memos (he provided this explanation in the context of explaining considerations of whether the program complied with Article 16 of the Convention against Torture).

The General Counsel said that the effort was working effectively under the DOJ 1 August 2002 memo which was the legal foundation for the debriefings and interrogations.

But later in the briefing, Harman appears to have noted that the MON didn't authorize torture, it only authorized capture and detention.

Rep. Harman noted that the [redaction] did not specify interrogations and only authorized capture and detention. She asked whether we had questioned detainees before the [redaction] The GC said yes, but no enhanced techniques had been used before Abu Zabayda and there was [1.5 line redaction] Abu Zabayda 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 Zabayda.

From Harman's questions, it's unclear whether she had read the IG Report, which appears to have mentioned the MON but which would have also given her the false narrative told here about the Bybee Memo preceding the torture (note, there appears to have been no mention of Ibn Sheikh al-Libi's or Binyam Mohamed's treatment, the latter of which was done by US interrogators before the Bybee Memo).

Mary McCarthy gets fired for blowing the whistle on CIA's lies to Congress

That was in 2004. By 2006—when former CIA Deputy Inspector General Mary McCarthy got fired from the CIA for allegedly leaking to Dana Priest—Harman (and some other intelligence committee members in Congress) would have known or discovered more about CIA's lies to them.

A senior CIA official, meeting with Senate staff in a secure room of the Capitol last June, promised repeatedly that the agency did not violate or seek to violate an international treaty that bars cruel, inhumane or degrading treatment of detainees, during interrogations it conducted in the Middle East and elsewhere.

But another CIA officer — the agency's deputy inspector general, who for the previous year had been probing allegations of criminal mistreatment by the CIA and its contractors in Iraq and Afghanistan — was startled to hear what she considered an outright falsehood, according to people familiar with her account. It came during the discussion of legislation that would constrain the

CIA's interrogations.

[snip]

In addition to CIA misrepresentations at the session last summer, McCarthy told the friends, a senior agency official failed to provide a full account of the CIA's detainee-treatment policy at a closed hearing of the House intelligence committee in February 2005, under questioning by Rep. Jane Harman (Calif.), the senior Democrat.

What's particularly interesting about McCarthy is that she served in the Clinton White House overseeing covert programs.

In 1996, then-national security adviser Anthony Lake, who shared her intense interest in Africa, recruited her to a White House job in which she helped conduct an annual review of all presidentially authorized covert-action programs.

[snip]

As the National Security Council's director and then senior director of intelligence programs, McCarthy helped enforce the classification rules at the White House and sometimes blocked staff access to documents or CIA programs.

That doesn't mean that's why she objected to CIA's lying to Congress. But it does make her an interesting person to expose the degree to which CIA was deceiving Congressional oversight committees.

Leon Panetta reveals Bush never briefed on assassination squads—and Obama tries to maintain status quo

In addition to the drones and torture, the Gloves Come Off MON also authorized paramilitary assassination squads (for use in 80 countries!)

which, in practice, turned out to be another Blackwater contract.

That detail was revealed when Leon Panetta got briefed on the program and immediately realized he had to brief the Intelligence Communities.

But even after Panetta revealed that CIA had not briefed Congress on yet another aspect of the Gloves Come Off MON, the Obama Administration still clung to the status quo of not briefing the Intelligence Committees fully.

June 24: Panetta's briefing on this program

June 26: HPSCI passes a funding authorization report expanding the Gang of Eight briefings

July 8: The Administration responds with an insulting appeal to a "fundamental compact" between Congress and the President on intelligence matters

July 8: Reyes announces CIA lied to Congress

Which is when Silvestre Reyes announced an investigation into all the lies CIA told Congress (though see Bill Leonard's lack of sympathy here). Which, six months later, documented 5 different programs or events CIA lied to Congress about.

In response, both intelligence committees passed intelligence authorization to mandate further briefings. Which the White House, again, tried to defeat with a veto threat.

Which really pissed Nancy Pelosi off. In an interview with me in July 2010, Pelosi stated that if the Administration did not expand the briefing on programs, it would have to take responsibility if anything went wrong.

And if they don't want to do that then it has to be very clear. I think the Administration does not make, I think

it's not right to deprive the members of Congress of information with the idea that we're going to jeopardize the national security of our country. Of course we are not. And every safeguard is built into what we have in our legislation, sources and methods, you know what the list would be.

[snip]

if the Administration wants to take full responsibility for anything that happens. But that's not right. Because we passed these bills. And we should be able to pass a bill that gives us the the right—how dare the Administration say they would veto the bill?

Ultimately, the 2010 Intelligence Authorization did normally require briefing of the full committees within six months after a program started.

The Administration still isn't fully briefing Congress on the Gloves Come Off MON

Which brings us to today. To where, 9 months after the Administration first briefed the Intelligence Committees on the Anwar al-Awlaki targeting—and 4 months after his death—they still hadn't answered very basic questions about the limits on targeted killings of American citizens ... such as whether the Administration believed it could target US citizens in the United States.

Here we are, over a decade after George Bush signed the Gloves Come Off MON, and the Executive Branch is still refusing to brief adequately on the programs purportedly authorized by it.