

# **RICHARD BEN-VENISTE CALLS OUT OBAMA FOR SPIKING THE PRIVACY BOARD**

I just watched a scintillating panel at the Aspen Security Forum. It featured former LAPD Chief Bill Bratton, Alberto Gonzales, ACLU's Anthony Romero, John Yoo, and David Cole, moderated by Dahlia Lithwick.

The panel itself was notable for the staging of it. The panelists were seated right next to each other, with no table in front. Gonzales sat right next to Romero; Yoo sat right next to Cole. So when Romero corrected Lithwick's assertion that the Bush Administration had showed respect for using civilian trials with terrorists by recalling that Gonzales had argued for holding American citizen Jose Padilla without trial, Gonzales shifted notably, uncomfortably, by my read. And when Cole rehearsed the language people like Michael Mukasey and Jack Goldsmith used to describe Yoo's memo all the while pointing with his thumb at Yoo sitting next to him—"solvenly," he emphasized—Yoo also shifted, though aggressively towards Cole. Before it all ended, Romero started reading from Yoo's torture memo; Yoo accused him of using Dickensian dramatic delivery.

The physical tension of these men, attempting to contain the contempt they had for each other while sitting in such close proximity, was remarkable.

There were a number of other highlights: John Yoo made the ridiculous claim that no one in the human rights community had come out against drone strikes (Romero came back later and reminded him the ACLU had sued on precisely that issue, representing Anwar al-Awlaki's family).

Gonzales insisted there should be accountability (no matter that he escaped it, both when he politicized DOJ and when he took TS/SCI documents home in his briefcase). Romero hailed Obama's "willingness to shut down secret sites," apparently missing Jeremy Scahill's recent scoop about the CIA-paid prison in Somalia. Yoo, as is typical, lied to protect his actions, not only repeating that canard that torture helped to find Osama bin Laden (rather than delayed the hunt as is the case), but also to claim that warrantless wiertaps helped find the couriers; they did, but those were warrantless wiretaps in the Middle East, not the US!

Just as interesting, though, were the questions. Yoo was somewhat stumped when an IAVA member and former officer asked what an officer who had taken an oath to support and defend the Constitution should do if he received what he believed was an unconstitutional order.

Finally, most interesting came when Richard Ben-Veniste—the former Watergate prosecutor and 9/11 Commissioner—asked questions. He said, first of all, that Mohammed al-Qahtani had been providing information before he was tortured (a claim I'm not sure I've heard before, made all the more interesting given that we know the Commission received interrogation reports on a running basis). But then his torture turned him into a "vegetable," which meant the US was unable to prosecute him.

And then Ben-Veniste raised something that the panel, for all its discussion about accountability, didn't mention. The 9/11 Commission recommended a privacy board to ensure that there was some balance between civil liberties and security. Bush made a half-assed effort to fulfill that requirement; after 2006, at least, there was a functioning Privacy and Civil Liberties Oversight Board. But Obama has all but spiked it, killing it by not appointing the Board.

Particularly given Ron Wyden's and Mark Udall's concerns about secret law, it's time the civil

liberties community returned its focus on Obama's refusal to fulfill the law and support this board. That board is precisely the entity that should be balancing whether or not the government is making appropriate decisions about surveillance.

Update: David Cole corrected for John.