

AG CLAIMS CLEAR EVIDENCE OF LEGAL LIABILITY DOES NOT CONSTITUTE A BASIS FOR INVESTIGATION

In two striking exchanges yesterday, Sheldon Whitehouse tried to get AG Mukasey to explain why DOJ was not conducting an investigation into the activities portrayed on the torture tapes. Whitehouse wondered whether DOJ had refrained from investigating the underlying conduct because those who engaged in the torture had authorization to use it. That amounts to the Nuremberg Defense, Whitehouse insisted correctly. In response, Mukasey suggested there simply was no reason to do an investigation. DOJ had never seen any facts, Mukasey claimed, that would warrant an investigation.

Whitehouse: Process question. In terms of advisory responsibilities, not going to investigate. You've disclosed waterboarding not part of CIA interrogation regime. Still leaves open torture statute whether there are concrete facts or circumstances, given that that evaporates, whatever it is it is. I'm trying to determine if that is taking place (the analysis), if you're waiting for Durham's investigation to look more into what happened. Or if there has been a policy determination made, that bc there has been a claim of authority, there will be no investigation. What is the process for coming to this decision.

MM: Facts come to the attention to the Department that warrant investigation.

But that's not true, of course. We know DOJ

received the results of the IG's report on the CIA's interrogation techniques.

OIG notified DOJ and other relevant oversight authorities of the review's findings.

And we know that that report stated that the conduct depicted on the tapes amounted to cruel and inhuman treatment.

A classified report issued last year by the Central Intelligence Agency's inspector general warned that interrogation procedures approved by the C.I.A. after the Sept. 11 attacks might violate some provisions of the international Convention Against Torture, current and former intelligence officials say.

[snip]

The report, by John L. Helgerson, the C.I.A.'s inspector general, did not conclude that the techniques constituted torture, which is also prohibited under American law, the officials said. But Mr. Helgerson did find, the officials said, that the techniques appeared to constitute cruel, inhuman and degrading treatment under the convention.

[snip]

In his report, Mr. Helgerson also raised concern about whether the use of the techniques could expose agency officers to legal liability, the officials said. They said the report expressed skepticism about the Bush administration view that any ban on cruel, inhuman and degrading treatment under the treaty does not apply to C.I.A. interrogations because they take place overseas on people who are not citizens of the United States.

This is a report from the CIA itself, asserting that the interrogation methods depicted on the tapes may well violate an international agreement to which the US is party. The report explains that those who conducted the torture may well face legal liability.

But the Attorney General claims DOJ has never received any facts that warrant an investigation.