

JANE MAYER, THE CIA INSPECTOR GENERAL'S REPORT, AND THE TORTURE TAPES

Though Mayer doesn't connect the eventual destruction of the torture tapes in November 2005 with the Doug Jehl story published on November 9, 2005, revealing the conclusion of the CIA Inspector General's report on torture, she reinforces a point I've made in the past—the decision to destroy the torture tapes was closely tied to the release of the IG report and the analysis made in the report.

The book is even more detailed than published excerpts have been about starkly the IG report changed the views on torture among some Administration officials, particularly Jack Goldsmith.

The 2004 Inspector General's report, known as a "special review," was tens of thousands of pages long and as thick as two Manhattan phone books. It contained information, according to one source, that was simply "sickening." The behavior it described, another knowledgeable source said, raised concerns not just about the detainees but also about the Americans who had inflicted the abuse, one of whom seemed to have become frighteningly dehumanized. The source said, "You couldn't read the documents without wondering, "Why didn't someone say, 'Stop!'"

Goldsmith was required to review the report in order to settle a sharp dispute that its findings had provoked between the Inspector General, Helgeson, who was not a lawyer, and the CIA's General Counsel, Scott Muller, who

was. After spending months investigating the Agency's interrogation practices, the special review had concluded that the CIA's techniques constituted cruel, inhuman, and degrading treatment, in violation of the international Convention Against Torture. But Muller insisted that every single action taken by the CIA toward its detainees had been declared legal by John Yoo. With Yoo gone, it fell to Goldsmith to figure out exactly what the OLC had given the CIA a green light to do and what, in fact, the CIA had done.

As Goldsmith absorbed the details, the report transformed the antiseptic list of authorized interrogation techniques, which he had previously seen, into a Technicolor horror show. Goldsmith decline to be interviewed about the classified report for legal reasons, but according to those who dealt with him, the report caused him to question the whole program. The CIA interrogations seemed very different when described by participants than they had when approved on a simple menu of options. Goldsmith had been comfortable with the military's approach, but he wasn't at all sure whether the CIA's tactics were legal. Waterboarding, in particular, sounded quick and relatively harmless in theory. But according to someone familiar with the report, the way it had been actually used was "horrible." (288)

As Mayer points out, just as Goldsmith was trying to deal with this question, the confrontation on the illegal wiretap program hit (in March 2004), as did the Abu Ghraib scandal (in April). (I'd add that, in the same March to June time period, Fitzgerald's questions for Libby and Cheney and his moves to subpoena journalists would have made those two, at least, worried that their efforts to cover up the Plame

outing might collapse.)

That's the background for the White House briefing on the torture tapes.

Then, on April 28, the Abu Ghraib story broke. Panic spread through the administration, from the top of the Pentagon through the CIA and on through the White House. One obvious lesson was that pictures—the actual incontrovertible proof of abuse—had a power that no written or oral description could match. At the CIA, where hundreds of hours of videotapes of two U.S.-held Muslim detainees being strapped down and waterboarded were sitting in a safe, the immediate reaction, one administration source involved at the time said, was "Uh-oh. A lightbulb went on."

On May 24, Muller met at the White House with Addington, Gonzales, and Bellinger to discuss the fallout from both the Inspector General's report and Abu Ghraib. He mentioned the CIA's videotapes and said the Agency wanted to destroy them. According to CIA notes taken at the time, the consensus of the group was that the CIA should not destroy the tapes. Addington's attitude, a participant said, was along the lines of "Don't bring this into the White House!" The explosiveness of even talking about destroying potential evidence was clear to all. (292)

It was against that background, Mayer describes, which Goldsmith rescinded the OLC memo supporting CIA's interrogation methods, quit, followed by Daniel Levin's attempts to write an OLC memo based in law. Then, in 2005, the Administration had Steven Bradbury "audition" to be head of OLC by writing memos again authorizing torture, particularly the combination of interrogation methods. And, in

that environment, Congress was considering a ban on torture. Which is when the CIA IG report came into play again.

Further rattling the CIA was a request in May 2005 from Senator Jay Rockefeller, the ranking Democrat on the Senate Intelligence Committee, to see over a hundred documents referred to in the earlier Inspector General's report on detention inside the black prison sites—the one that had so upset Goldsmith. Among the items Rockefeller specifically sought was a legal analysis of the CIA's interrogation videotapes. Rockefeller wanted to know if the intelligence agency's top lawyer believed that the waterboarding of Zubayda and Khalid Sheikh Mohammed, as captured on the secret videotapes, was entirely legal. The CIA refused to provide the requested documents to Rockefeller. But the Democratic senator's mention of the videotapes undoubtedly sent a shiver through the Agency, as did a second request the made for these documents to Goss in September 2005. (313)

Note, the terror tapes we know of depict Abu Zubaydah and al-Nashiri being waterboarded, not Khalid Sheikh Mohammed. Something to ask Mayer about when she does a book salon at FDL later this month, I guess.

That CIA IG report apparently provides enough detail to make conservative lawyer Jack Goldsmith balk. And, it includes detailed analysis of the now-destroyed torture tapes (I wonder if Jello Jay has **ever** gotten to see that analysis?).

Also, I wonder: did Goldsmith ever resolve the dispute between Muller and Helgeson whether or not those tapes depicted illegal torture?