

# THE FIVE CRIMINAL REFERRALS WAPO DOESN'T REPORT

Can I just say how relieved I am that a TradMed outlet has finally reported the details about how the CIA's torture program exceeded guidelines that I noted three weeks ago, from the recognition that the CIA was using much more water in its waterboarding than OLC authorized to the description of that action as "poignant"? It's high time someone [else] started reporting the evidence that the torture program was not legal, even according to the Bybee Memo, as news.

The new news in this piece, though, is that the SSCI is reviewing a 2005 CIA IG [corrected] report on the torture tapes—a report that Jello Jay requested (to no avail) back when it was published.

To assess whether interrogators complied with the department's guidance, Senate intelligence committee investigators are interviewing those involved, examining hundreds of CIA e-mails and reviewing a classified 2005 study by the agency's lawyers of dozens of interrogation videotapes, according to government officials who said they were not authorized to be quoted by name.

[snip]

The videotape study, which the Senate intelligence committee demanded to see in 2005 but did not receive until last year, assessed the legality of interrogations that occurred between April and December 2002.

I've said before that Jello Jay's requests for this report and other information from the 2004 CIA IG report likely contributed as much to the

CIA's decision to destroy the torture tapes as all the other reasons. It's nice to see that it only took him three years to get the document.

But there's a claim reported in this story that seems to conflict with known information. It quotes two Bushies saying that the CIA never made any criminal referrals out of the [I think] 2004 CIA IG report.

But two Bush administration officials privy to its conclusions said it did not provoke a specific CIA "referral" to the department suggesting an investigation of potential criminal liability, and no such investigation was undertaken at the time.

Though it is not entirely clear, the context seems to suggest that "its" refers to the 2004 CIA IG report. Perhaps the two Bushies mean the conclusions of that report did not provoke a "specific CIA 'referral'" to DOJ, even if the CIA IG referred specific cases before he reached his conclusion.

But we know from the DOJ IG report that the CIA IG referred five cases to DOJ.

[Alice Fisher] said she recalled there was an investigation based on a CIA referral that may have related to detainee treatment or interrogation techniques, and that she became aware of some facts relating to CIA interrogations. She did not say when DOJ received the CIA referral, though she noted that it was sometime "later." [Later than the late 2002-early 2003 time frame of a debate about al-Qaeda.] Documents reflect a total of five referrals by the CIA OIG to DOJ. These referrals were made between February 6, 2003 and March 30, 2004.

Now, those two Bushies may have been parsing or may have been referring to the 2005 CIA IG

report. But otherwise, they seem to be either unaware or lying about the criminal referrals arising out of the torture program.

As the evidence builds that the CIA knew their own torture program was illegal, we continue to have Bushies claiming all that evidence really doesn't add up to a crime. But DOJ's IG appears to disagree with these particularly Bushies' claim that the CIA didn't refer any of these crimes.

Update: Corrected to indicate that the 2005 report was not an IG report—according to Jello Jay, it was a CIA Office of General Counsel report.

Included in my letter was a request for the CIA to provide to the Senate Intelligence Committee the CIA's Office of General Counsel report on the examination of the videotapes and whether they were in compliance with the August 2002 Department of Justice legal opinion concerning interrogation.

Thanks to drational for pointing out the error.