

PHILIP ZELIKOW: HOW BUSHCO GAMED THE BRIEFING PROCESS

One more important point on the briefing process.

In this exchange between Dick Durbin and Philip Zelikow, Zelikow makes clear how the briefing process is supposed to work.

ZELIKOW: Formally, what's supposed to happen is, a memorandum of notification is prepared that lets key members of Congress know that a program is being undertaken with the authorization of the president, pursuant to some prior presidential finding.

And therefore, members of Congress are being informed...

DURBIN: After...

ZELIKOW: ... pursuant to this finding, we are now doing certain things.

DURBIN: After the fact?

ZELIKOW: It could be after the fact. It should be at the time the program is initiated and before the program is implemented, so that it appears that you're taking the congressional consultation seriously, which the administration should.

The President prepares a memorandum of notification for "key members" of Congress to let them know a program "is being undertaken with the authorization of the president, pursuant to some prior presidential finding." So: a finding, then authorization.

Durbin presses him on whether Congressional notification should be before or after and

Zelikow states that—so "it appears" that you're taking Congressional consultation seriously—the notification should happen at the time the program is initiated (which, in the case of the torture program, would have been no later than July 2002).

Now, when Durbin asks Zelikow directly whether Congress got that before the fact briefing in this case, Zelikow claims ignorance.

DURBIN: So, when members of Congress were briefed of this, was it before the fact? Were they being asked to authorize these techniques and give their approval?

ZELIKOW: Sir, I think Senator Feinstein mentioned, SSCI is apparently really trying to break down the chronology. The Office of the Director of National Intelligence has been publicizing chronologies of briefings, which then need to be matched up against when we were actually doing things.

And so, the honest answer is, I don't know whether folks were briefed before the fact.

Yes, Zelikow, you do know whether folks were briefed before the fact. There's the SSCI narrative (to which DiFi's work—alluded to by Zelikow—is follow-up), which states clearly that Congress got briefed after Abu Zubaydah had already been tortured.

In the fall of 2002, after the use of interrogation techniques on Abu Zubaydah, CIA records indicate that the CIA briefed the Chairman and Vice Chairman of the Committee on the interrogation. [my emphasis]

Or, you can compare this passage from the Bradbury memo...

The CIA used the waterboard "at least 83 times during August 2002" in the interrogation of Zubaydah.

... with the CIA briefing list showing the first Congressional briefing on September 4, 2003. The public record makes it crystal clear that folks were briefed after the fact, that the Administration did not make any effort to consult Congress before the fact.

But there may be a reason why Zelikow got so squirmy when asked whether the Administration fulfilled its obligation to inform Congress (aside from the fact that Condi would have had a central role in that notice, and aside from the fact that the SSCI narrative and Yoo's testimony suggest Condi had a role in circumscribing any such consultation). As Zelikow admits, the Administration rebutted the arguments that Zelikow himself made by pointing to members of Congress who had been briefed and who—the Administration claimed—didn't "have a problem with it."

ZELIKOW: I think I do. And as I have listened to both sides of this argument, I step away from this with some concern.

I will tell you on the inside, when I was arguing – we were having heated arguments about these policies on the inside in the White House situation room. And the argument would often be deployed against me and my colleagues, that, well, we briefed the following members of Congress – name, name, name, name, name – and they don't have a problem with it.

So, in other words, they're using – these briefings are being used, actually, to deal with arguments on the inside of the administration. Yet I hear what you're saying and what other members of Congress have said. [my emphasis]

Mind you, in 2005 and 2006, when Zelikow was having these arguments inside the WH Situation Room, the only Democrats who had been fully briefed on the program, Jane Harman and Jello Jay, were both trying to fight the program. Harman had written a letter to Scott Muller objecting to the program on policy grounds (and asking for what would amount to a formal presidential finding). And Jello Jay was being rebuffed in his efforts to get more information on the CIA IG report.

The Republicans are working so hard to argue that Democrats were properly briefed because—per Lindsey Graham—if it becomes clear they weren't, then it is evidence of criminal intent. And—per Zelikow—because the Bush Administration was rebutting its own internal critics with claims about whether or not members of Congress bought off on the program. (Incidentally, the appeal to Congressional approval is precisely what BushCo was attempting with their March 10 pre-hospital briefing to Congress, and undoubtedly the reason Bush had Gonzales makes notes of the meeting after the fact—this was a pattern for these guys.)

Zelikow doesn't say it (in fact, in his statement, he claims that members of Congress from both parties are responsible), but his description of the way Congressional briefings should work, and his description of how BushCo made claims about Congressional approval that may not be true, show how false the Republicans appeals to Congressional briefings is. Philip Zelikow explains how briefing Congress is supposed to work, but all the available evidence shows that's not what happened. Rather than briefing Congress to get even the appearance of Congressional consultation, BushCo was briefing Congress to help win bureaucratic battles within the Administration.