

# THE CHANGING STORY ON PAST TORTURE INVESTIGATIONS

Two months ago, when the torture apologists looked like they were succeeding in preventing a torture investigation, they claimed to a credulous Jeffrey Smith that the CIA IG Report "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." Of course, that claim conflicted with the CIA IG's own admission that documents show a total of five criminal referrals made over the course of the investigation.

Well, now that it looks more likely that Eric Holder will launch an investigation, the CIA claims that DOJ investigated 20 criminal referrals.

"This has all been reviewed and dealt with before," says Paul Gimigliano, a CIA spokesman.

After the IG report reached Justice, a task force was set up in the U.S. Attorney's Office in Alexandria, Va., that reviewed about 20 criminal referrals of detainee abuse sent over by the CIA and military criminal investigators. Officials familiar with the referrals have said they were horrific: one involves allegations that a naked prisoner in CIA custody in Afghanistan froze to death after being left in a prison known as the "salt pit."

But task-force prosecutors say they ran into a host of problems, including a lack of witnesses and forensic evidence, and declined to prosecute in all but one case. "We wanted to make these cases, but they just weren't there," says Rob

Spencer, the former career Justice prosecutor who headed the task force until 2006. Ken Melson, who oversaw Spencer's work and was appointed by Holder as acting Alcohol, Tobacco, Firearms and Explosives director, says the cases were "looked at aggressively" and without political pressure. "I think we made the right decision on these cases," he says.

Of course, all three claims are likely true: CIA made no "specific referrals" ... "when the report was finished," but did make five referrals over the course of the investigation. And, once it took a look at the report (and probably once it looked at a bunch of military referrals), DOJ reviewed 20 cases. It's funny, though, how zero can become five can become twenty as the need for different spin arises.

Nevertheless, Newsweek's sources hint, a fresh investigation may be able to make progress even without looking at the architects of the torture program.

(The aide hints that there may be new information that has influenced Holder's view on the subject.) Still, Justice officials say any review will not involve investigating senior Bush officials who ordered enhanced interrogation techniques.

One potential source of that new information is John Durham's investigation into the torture tape destruction, which seemed to take on new life in February, after Bush and Cheney left office.

Ultimately, though, Holder may be facing circumstances in which there is more evidence against the torture architects than against the torturers themselves. Yet, it seems, he'd still rather prosecute the "few bad apples."