

IS DOJ WITHHOLDING THE OPR REPORT TOMORROW TO FRAME A WHITE-WASH INVESTIGATION?

MadDog pointed to this passage in NYT's story on the new revelations from the CIA IG report.

Besides the inspector general's report, other documents expected to be released Monday are a 2007 Justice Department memo reauthorizing the C.I.A.'s "enhanced" interrogation techniques, documents that former Vice President Dick Cheney has said provide evidence that the interrogation methods produced valuable information about Al Qaeda; and Justice Department memos from 2006 concerning conditions of confinement in C.I.A. jails.

Best as I can tell, these are:

2007 Justice Department memo: The OLC memo Spencer was the first to report. From his Windy report:

As a result, according to the former senior intelligence official, after Bush issued the order, the CIA again asked the Justice Department's Office of Legal Counsel to review the techniques listed in the revised interrogation program in order to determine their legality, just as the Office of Legal Counsel had done in 2002 and 2005, after previous periods of challenge to the post-9/11 interrogation program.

2006 Justice Department memos: The SSCI Narrative describes these to be interpretations of the DTA and the Hamdan decision.

In June 2006, in *Hamdan v. Rumsfeld*, the Supreme Court held that Common Article 3 of the Geneva Convention applied to the conflict with Al-Qa'ida, contrary to the position previously adopted by the President. Common Article 3 of the Geneva Conventions requires that detainees "shall in all circumstances be treated humanely," and prohibits "outrages upon personal dignity, in particular, humiliating and degrading treatment" and "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." At the time of the *Hamdan* decision, the War Crimes Act defined the term "war crime" to include "a violation of Common Article 3."

In August 2006, OLC issued two documents considering the legality of the conditions of confinement in CIA facilities. One of the documents was an opinion interpreting the Detainee Treatment Act; the other document was a letter interpreting Common Article 3 of the Geneva Conventions, as enforced by the War Crimes Act. These documents included consideration of U.S. constitutional law and the legal decisions of international tribunals and other countries.

Cheney's documents: Reporting elsewhere suggests this will include more than just the two documents Cheney requested, but a few others. They will basically argue, for example, that Khalid Sheikh Mohammed provided a ton of information, but they will not consider whether torture was the most effective way of getting him to provide that information. As Spencer has reported, both Ron Wyden and Russ Feingold supported their release.

Okay, it looks like a busy week for us here.

But notice what **is not** on this list?

The Office of Public Responsibility report, which has been due out all summer, and last we heard was at the CIA being reviewed to protect (presumably) John Rizzo's role in crafting OLC memos that claimed to authorize torture.

Which is all very convenient for Eric Holder's reported plan to name a prosecutor to investigate torture (I'm guessing this will happen this week, if not tomorrow itself), but not to investigate the process that went into "authorizing" torture.

If it is, indeed, DOJ's plan to release all the other torture documents save the OPR report, it will have the effect of distracting the media with horrible descriptions of threats with power drills and waterboarding, away from the equally horrible description of lawyers willfully twisting the law to "authorize" some of those actions. It will shift focus away from those that set up a regime of torture and towards those who free-lanced within that regime in spectacularly horrible ways. It will hide the degree to which torture was a conscious plan, and the degree to which the oral authorizations for torture may well have authorized some of what we'll see in the IG Report tomorrow.

If it is, indeed, DOJ's plan to release the IG Report and announce an investigation without, at the same time, releasing the OPR report, it will serve the goal of exposing the Lynndie England's of the torture regime while still protecting those who instituted that regime.