

ASHCROFT VERSUS CIA

When I read the CIA IG Report yesterday, I thought to myself, "Of course! They didn't investigate all the instances when torturers exceeded the Bybee Two memo description of waterboarding because John Ascroft approved of them."

I got that from reading the following passages:

On 29 July 2003, the DCI and the General Counsel provided a detailed briefing to selected NSC Principals on CIA's detention and interrogation efforts involving "high value detainees," to include the expanded use of EITS.²⁸ According to a Memorandum for the Record prepared by the General Counsel following that meeting [which was dated August 5, 2003], **the Attorney General confirmed that DoJ approved of the expanded use of various EITs, including multiple applications of the waterboard.**²⁹ The General Counsel said he believes everyone in attendance was aware of exactly what CIA was doing with respect to detention and interrogation, and approved of the effort.

[snip]

The Review determined that the interrogators used the waterboard on Khalid Shaykh Muhammad in a manner inconsistent with the SERE application of the waterboard and the description of the waterboard in the DoJ OLC opinion, in that the technique was used on Khalid Shaykh Muhammad a large number of times. **According to the General Counsel, the Attorney General acknowledged he is fully aware of the repetitive use of the waterboard** and that CIA is well within the scope of the DoJ opinion and the authority given to CIA by that opinion. **The Attorney General was informed the**

waterboard had been used 119 times on a single individual. [my emphasis]

But John Ashcroft disagrees with that representation, as relayed in a June 18, 2004 letter from Jack Goldsmith to George Tenet.

Dear Director Tenet:

I am writing at the Attorney General's request concerning a report that that [sic] the Inspector General of the CIA has recently forwarded to your office. The Department of Justice did not have an opportunity to review a draft of the report and instead only had a chance to review the final report after it had been forwarded to your office.

The Department of Justice believes that the report contains some ambiguous statements concerning the Attorney General's remarks at a 29 July 2003 meeting of selected NSC principals that should be clarified and that it contains some statements that mistakenly characterize the extent of advice provided by the Department.

The Attorney General requests that you return the report to your Inspector General with a request to make the modifications suggested in the attached document, which we believe are necessary to clarify ambiguities or correct mistaken characterizations. [my emphasis]

Four days later, Muller responded by saying that he had forwarded the memo to John Helgerson, but was forwarding the report (presumably as it was) to Congress that week anyway. Finally, almost two weeks later, Helgerson wrote to Ashcroft, informing him they couldn't "recall" the reports, but would circulate his letter with any further circulation of the report.

We have carefully reviewed the comments of the Department of Justice regarding the Special Review. We concluded that it would not be practicable to recall the Review and integrate those comments into the body of the Review. However, we do agree that it is appropriate for those reading the review to have the benefit of those comments. Accordingly, we intend to include your 18 June memorandum with any further circulation of the review. After consultation with you, we did transmit the memorandum to the Chairmen and ranking minority members of the Congressional Intelligence Oversight Committees.

Now, I wouldn't necessarily buy Ashcroft's assertion that the IG Report misrepresented what he said. But the IG Report makes the same false claims about Congressional briefings that the CIA torture briefing list makes (I'll return to that in a future post). Furthermore, the memorandum for the record of that meeting was written a week after the fact.

But there's another reason to wonder whether the IG Report might misrepresent that meeting.

Remember that unlike Ashcroft, Cheney **did** get a draft of the report to review. He got it around May 2004, just months after Ashcroft had refused to reauthorize Cheney's illegal wiretap program. And as far as I can tell, one of the very few events described in the IG Report that involves Cheney is that July 29 meeting. Per the SSCI Narrative, the attendees were (from the CIA) Tenet and Muller and (from the National Security Counsel) Cheney, Condi, Ashcroft, the Acting head of OLC (?), Yoo(?), Gonzales, and Bellinger. Except for maybe Bellinger, all people with a reason to be cranky at Ashcroft.

One way or another, it's a tidy way to make sure waterboarding, as practiced, would not get prosecuted. Because it quickly becomes Ashcroft's word against that of the CIA

(potentially backed by Cheney) that DOJ did not authorize such excessive uses of waterboarding.

Update: I lied. The memo has been released (it had previously never been identified in any Vaughn Index, which is curious in and of itself). The big disagreement about the July 29 meeting is as follows:

The reference to "expanded use" of techniques is somewhat ambiguous. In context, it appears to mean simply the use of approved techniques on other detainees in addition to the particular detainee (Abu Zubaydah) expressly addressed in an OLC opinion to the Acting General Counsel, John Rizzo, on August 1, 2002. If that is the intended meaning, the statement in the Report is entirely correct.