

WAS JOHN YOO FREE-LANCING WHEN HE APPROVED THE “LEGAL PRINCIPLES”?

Earlier today, I showed that there is a CIA document on the "Legal Principles" on torture that included legal justifications that had not been in any of the August 1, 2002 OLC memos authorizing torture. I showed that the document changed over time, but that when CIA asked Jack Goldsmith to "re-affirm" the Legal Principles in March 2004, he stated that he did not consider the document to be a product of OLC.

I have further inquired into the circumstances surrounding the creation of the bullet points in the spring of 2003. These inquiries have reconfirmed what I have conveyed to you before, namely, that the bullet points did not and do not represent an opinion or a statement of the views of this Office.

It seems—reading Jack Goldsmith and John Ashcroft’s objections to the CIA IG Report—that John Yoo was free-lancing when he worked with CIA on them.

In the DOJ dissent to the IG Report, Goldsmith explained that OLC disagreed with CIA’s representation of OLC’s role in drafting the Legal Principles document.

The disagreement revolves around the status of a document containing a set of bullet points outlining legal principles and entitled "Legal Principles Applicable to CIA Detention and Interrogation of Captured al-Qa’ida Personnel." The bullet points were drafted by OLC in consultation with OLC attorneys in the Spring of 2003. There is no dispute that OLC attorneys

reviewed and provided comments on several drafts of the bullet points. In OGC's view, OGC secured formal OLC concurrence in the bullet points and thus believed that the bullet points reflected a formal statement of OLC's views of the law. OLC's view, however, is that the bullet points—which, unlike OLC opinions, are not signed or dated—were not and are not an opinion from OLC or formal statement of views.

Goldsmith's memo makes it clear, twice, that the work on the bullet points was the work of one OLC lawyer—John Yoo—and not the work of the department. First, it makes clear that OLC informed CIA that it did not stand by the legal reasoning in the bullets shortly after Yoo left (and, though Goldsmith doesn't say it, the day after Philbin got the bullets on June 16).

OLC also believes that the status of the bullet points was made clear at a meeting on June 17, 2003 soon after the Deputy Assistant Attorney General with whom OGC had consulted on the bullet points had departed from the Department of Justice.

And, in one of its requested corrections to the IG Report, Goldsmith specifies that the OLC review of the document was just the review OLC lawyers, not OLC itself.

Strike the sentence that reads, "According to OGC, this analysis was fully coordinated with and drafted in substantial part by OLC." Replace it with the following: "This analysis was drafted by OGC in consultation with attorneys from OLC."

What appears to have happened is that Yoo worked on the document with CIA without telling others at OLC—not even Pat Philbin, who would take on some of the national security issues there. And

as soon as Philbin got his copy on June 16, 2003, he went to the CIA and told them that the document had not been vetted by OLC as a whole.

And that's the process, you see, that they tried to use to claim that the torture program did not violate CAT.

Update: See smitheus on John Yoo just making shit up about CAT including an exemption for exigencies.