

“WE WILL PROVIDE, AT A LATER DATE, AN OPINION THAT EXPLAINS THE BASIS FOR THIS CONCLUSION”

There’s an interesting line in the August 6, 2004 letter from Daniel Levin to John Rizzo approving the use of waterboarding with (we know from the later 2005 memos and from the short name included here) Hassan Ghul. Levin promises to send an opinion that explains the basis for his conclusion that waterboarding would be legal (albeit a close call).

We will provide, at a later date, an opinion that explains the basis for this conclusion.

That promise doesn’t appear on the July 7, 2004 letter from Jack Goldsmith approving the use of all the techniques but waterboarding (I’m not certain the letter pertains to Ghul). It doesn’t appear on the July 22, 2004 letter from John Ashcroft to John McLaughlin (then Acting DCI), approving everything but waterboarding. It doesn’t appear on the September 20, 2004 letter approving a bunch of other techniques, including water dousing.

It appears to show up only on the letter approving waterboarding. Waterboarding, and only waterboarding.

That’s mighty interesting because, in 2005, when OLC was just getting around to writing that promised opinion, CIA provided last minute information to make sure that waterboarding would be included in the March 10 Combined memo. They had to do so because CIA’s December 30 memo on combined techniques did not include waterboarding. So, with the last minute information, the Combined Memo came to argue

that it was okay to waterboard someone who had been deprived of sleep. And, as Jim Comey revealed in his emails, that Combined memo was really intended to authorize treatment retroactively.

Now this doesn't prove that the CIA waterboarded Ghul. (They claim to have decided not to because he was too obese for the technique.) Perhaps it wasn't Ghul they waterboarded; perhaps it was someone they tortured later. We can't ask Ghul because he remains disappeared, last seen in a Pakistani jail.

All of this is inconclusive. But Levin's promise of a follow-up memo, combined with the urgency surrounding the memo in April 2005, suggests they really did waterboard someone.

If so, they have been lying about it to Congress and the American people ever since.

Update: I'm still working through these—and I see that the August 26, 2004 letter from Levin to Rizzo has the same line, as well as a September 6, 2004 one that appears to relate to a different detainee. That letter discusses four new techniques that had not been used before, which showed up in the May 10, 2005 Techniques memo.