

JOHN YOO APPROVED THE STELLAR WIND AUTHORIZATION THAT FIRST COVERED IRAQ

As I noted, one interesting aspect of reading the Stellar Wind IG Reports is tracking the things that show up in the Snowden-leaked draft IG Report that are completely redacted in the DOJ-released report.

One thing that is completely redacted is that Stellar Wind was used to spy on Iraqi targets (or US targets alleged to be Iraqi targets during the war?), as explained here.

(TS//SI//NF) Iraqi Intelligence Service. For a limited period of time surrounding the 2003 invasion of Iraq, the President authorized the use of PSP authority against the Iraqi Intelligence Service. On 28 March 2003, the DCI determined that, based on then current intelligence, the Iraqi Intelligence service was engaged in terrorist activities and presented a threat to U.S. interests in the United States and abroad. Through the Deputy DCI, Mr. Tenet received the President's concurrence that PSP authorities could be used against the Iraqi Intelligence Service. NSA ceased using the Authority for this purpose in March 2004.

Given the timing, this almost certainly is one of the things Jack Goldsmith shut down in the first set of modifications in March 2004 (there appears to have been a parallel effort in 2004 to stop treating Iraqi prisoners as terrorists who could be tortured).

And while the officially released IG Reports hide all mention of this, there is one detail that says volumes. Amid the section describing

all the things Patrick Philbin found to be problematic in Yoo's OLC memos authorizing the program, this footnote appears (at PDF 442).

See Presidential Authorization of April 22, 2003 at para. 4(b)(i) & (ii). The April 22, 2003, Authorization was the only Authorization personally approved as to form and legality by Yoo. He approved the Authorization on April 18, 2003; five days before the date of his talking points memorandum.

John Yoo, not Attorney General Ashcroft, signed the Authorization that went into effect on April 22, 2003.

This Authorization was the first issued after Tenet declared Iraq terrorists on March 28, 2003 (I've added the Authorization dates here).

As it happens, that Authorization was also the last or second-to-last one signed while Yoo remained at DOJ. He left in June 2003 because Ashcroft had refused to let him assume the OLC AAG position after Jay Bybee moved onto his sinecure on the 9th Circuit.

That's not the last crazy thing Yoo did while at OLC: at roughly the same time he was free-lancing "Legal Principles" documents pretend-authorizing torture techniques that the original Bybee memo had not approved.

But I find it interesting that one of the last things Yoo did was sign an authorization to use a program purportedly focused on terrorists to surveil targets (who must in some part be in the US) related to a war of choice.