

THE UNOPENED TORTURE REPORT AND TRUSTING CIA ON OTHER COVERT OPERATIONS

Yesterday, Pat Leahy issued a Sunshine Week statement criticizing Richard Burr for attempting to reclaim all copies of the Torture Report, but also complaining that State and DOJ haven't opened their copy of the Torture Report.

I also was appalled to learn that several of the agencies that received the full report in December have not yet opened it. In a Freedom of Information Act (FOIA) lawsuit seeking release of the full report, Justice Department and State Department officials submitted declarations stating that their copies remain locked away in unopened, sealed envelopes. I do not know if this was done to attempt to bolster the government's position in the FOIA lawsuit, or to otherwise avoid Federal records laws. I certainly hope not. Regardless of the motivation, it was a mistake and needs to be rectified.

The executive summary of the torture report makes clear that both the State Department and the Justice Department have much to learn from the history of the CIA's torture program. Both agencies were misled by the CIA about the program. Both should consider systemic changes in how they deal with covert actions. Yet neither agency has bothered to open the final, full version of the report, or apparently even those sections most relevant to them.

Today, Ron Wyden issued a Sunshine Week release linking back to a February 3 letter Eric Holder is still ignoring. The letter – which I wrote about here – addresses 4 things: 1) the unclear limits on the President’s ability to kill Americans outside of war zones 2) the common commercial service agreement OLC opinion that should be withdrawn 3) some action the Executive took that Wyden and Russ Feingold wrote Holder and Hillary about in late 2010 and 4) DOJ’s failure to even open the Torture Report. Wyden’s statement, lumps all these under “secret law.”

U.S. Senator Ron Wyden, D-Ore., renewed his call for Attorney General Eric Holder to answer crucial questions on everything from when the government believes it has the right to kill an American to secret interpretations of law. The Justice Department has ignored these questions or declined to answer them, in some cases for years.

[snip]

“It is never acceptable to keep the basic interpretations of U.S. law secret from the American people. It doesn’t make our country safer, and erodes the public’s confidence in the government and intelligence agencies in particular,” Wyden said. “While it is appropriate to keep sources, methods and operations secret, the law should never be a mystery. Sunshine Week is the perfect time for the Justice Department to pull back the curtains and let the light in on how our government interprets the law.”

This may be secret law.

But I find it interesting that both Wyden’s letter and Leahy’s statement tie covert operations to the lessons from the Torture Report.

There are many reasons DOJ (and FBI) are

probably refusing to open the Torture Report. The most obvious – the one everyone is pointing to – is that by not opening it, these Agencies keep it safe from the snooping FOIAs of the ACLU and Jason Leopold.

But the other reason DOJ and FBI might want to keep this report sealed is what it says about the reliability of the CIA.

The CIA lied repeatedly to DOJ, FBI, and FBI Director Jim Comey (when he was Deputy Attorney General) specifically. Specifically, they lied to protect the conduct of what was structured as a covert operation, CIA breaking the law at the behest of the President.

Of course, both DOJ generally and FBI specifically continue to partner with CIA as if nothing has gone on, as if the spooks retain the credibility they had back in 2001, as if they *should* retain that credibility. (I'm particularly interested in the way FBI participated in the killing of Anwar al-Awlaki, perhaps relying on CIA's claims there, too, but it goes well beyond that.)

That's understandable, to a point. If DOJ and the FBI are going to continue pursuing (especially) terrorists with CIA, they need to be able to trust them, to trust they're not being lied to about, potentially, everything.

Except that ignores the lesson of the Torture Report, which is that CIA will lie about anything to get DOJ to rubber stamp criminal behavior.

No wonder DOJ and FBI aren't opening that report.