

~~TOP SECRET//20290713~~

CTC: [redacted] 3.5(c)  
1.4(c) 2004

MEMORANDUM FOR THE RECORD

SUBJECT: (TS) Meeting with National Security Adviser Rice in the White House Situation Room, Friday, 1.4(c) 2004  
re: Interrogations and Detainees 1.4(c)

1. (TS) National Security Adviser Rice chaired a meeting in the White House Situation Room on Friday, [redacted] from 1:00 - 2:30 p.m. to discuss al-Qa'ida facilitator [redacted] and whether CIA should render him and, if necessary, interrogate him using methods including enhanced interrogation techniques. In attendance were: Attorney General Ashcroft; Deputy Attorney General Comey; DCI Tenet; CIA General Counsel Muller; CIA/CTC Deputy Director Mudd; CIA officers [redacted] NSC legal adviser Bellinger; NSC Senior Director Shedd; and White House Counsel Gonzalez. 1.4(c)

2. (TS) The meeting opened with a substantive brief by [redacted] on the importance of [redacted] and the type of information he is likely to know. [redacted] followed with a brief overview of CIA's interrogation program, including a summary of the successes of the program (revelations by KSM and Abu Zubaydah) and an explanation of the waterboard technique and its role in the overall interrogation process. 1.4(c)

3. (TS) Briefing slides on "CIA Request for Guidance Regarding Interrogation of [redacted]" were passed out to each participant and the substance was covered for each of them. A copy of the slides are attached. 1.4(c)

4. (TS) Muller followed with a summary of policy and legal issues that had led to the halt in CIA's rendition and interrogation program. Among the issues Muller raised were the possible policy disconnect between public policy statements about prisoner treatment and the CIA program and constitutional ("shock the conscience") standards and other legal/policy [redacted]

[redacted] 3.5(c)

0150001

~~TOP SECRET//20290713~~

~~TOP SECRET//20250713~~

SUBJECT: (TS) Meeting with National Security Adviser Rice in the White House Situation Room, Friday, 1.4(c) 2004  
re: Interrogations and Detainee 1.4(c)

questions about enhanced techniques. Muller's remarks were the backdrop for a lengthy discussion about what techniques are appropriate, the basis for approval and what further work DoJ needs to conduct.

5. (TS) During a lengthy back-and-forth among a handful of the attendees, several key points were addressed:

a. The Attorney General repeatedly said that the enhanced techniques employed by CIA, other than the waterboard, are legal. He and others discussed the need for a further review of the waterboard technique, primarily because of the view that the technique has been employed in a different fashion than that which DoJ initially approved. It was later clarified that the Attorney General was referring to the nine techniques (other than the waterboard) referred to in the DoJ memorandum to Acting General Counsel John Rizzo regarding Abu Zubaydah and, as of the time of the meeting, the 24 techniques approved by the Secretary of Defense on or about 16 April 2003.

b. The National Security Adviser and the Counsel to the President understood the issue of whether there is now a gap between public statements and the CIA interrogation program in light of the Department of Justice's current refusal to address the issue of whether the techniques proposed for use with [redacted] meet the Constitution's "shock the conscience" standard and the statements in the 25 June 2003 letter to Senator Leahy from DoD General Counsel Haynes. They nevertheless repeated support for use of enhanced techniques except the waterboard with respect to [redacted]. At varying points, Rice stated that any perceived disparity would be dealt with later, that there was no disparity, that the techniques were humane in her view and she questioned whether that "single sentence" in the Haynes letter (the last sentence in paragraph two) was likely to be viewed as significant by the public.

1.4(c)

1.4(c)

c. In the course of the discussion of legal issues, the Attorney General stated, among other things:

~~TOP SECRET//20250713~~

0150002

~~TOP SECRET//20290713~~

SUBJECT: (TS) Meeting with National Security Adviser Rice in the White House Situation Room, Friday, [redacted] 1.4(c) 2004 re: Interrogations and Detainees [redacted] 1.4(c)

1. There is little precedent applying the "shock the conscience" test in the kind of circumstances involved here and that the case law was developed in the different context of law enforcement cases.

2. The standards developed under the Eighth Amendment are inapplicable because the conduct here is for a purpose other than the kind of punishment the Eighth Amendment addresses; and

3. The recent Supreme Court decisions did represent "some loosening of the ground" on the underpinnings of DOJ's analysis that the Constitution did not apply to aliens held overseas as enemy combatants. However, the Department's view remains that aliens overseas have no constitutional rights.

6. (TS) During the course of the discussion, the need to move quickly toward a decision was raised repeatedly, as a result of the assessment that [redacted] might have information that could disrupt the pre-election plot. In parallel, all agreed on the importance of ensuring that other principals, particularly the Secretaries of State and Defense, be briefed into the [redacted] case specifically and the policy and legal questions surrounding the CIA program more generally. 1.4(c)

7. (TS) The clear sense at the table among senior policymakers was that CIA had the requisite authority to use the Abu Zubaydah techniques (other than the waterboard) with [redacted] as well as other approved techniques, in light of the assessed likelihood that [redacted] has immediate threat information that could save American lives. 1.4(c)

[redacted] 3.5(c)

[redacted] John P. Mudd  
Deputy Director  
DCI Counterterrorist Center

~~TOP SECRET//20290713~~

0150003

~~TOP SECRET//20290713~~

SUBJECT: (TS) Meeting with National Security Adviser Rice in  
the White House Situation Room, Friday, 1.4(c) 2004  
re: Interrogations and Detainee 1.4(c)

Distribution:

Original - CTC Files  
1 - OGC

~~TOP SECRET//20290713~~

0150004

DATE: 2010-05-17 15:52

SUBJECT: MEETING WITH NATIONAL SECURITY ADVISER RICE IN THE WHITE HOUSE SITUATION ROOM,  
FRIDAY, 1.4(c) 2004 RE: INTERROGATIONS AND DETAINEE 1.4(c)

----- BODY -----

NSOR

3.5(c)

CTC: 1.4(c)

23 JULY 2004

MEMORANDUM FOR THE RECORD

SUBJECT: (TS) MEETING WITH NATIONAL SECURITY ADVISER RICE IN  
THE WHITE HOUSE SITUATION ROOM, FRIDAY, 1.4(c) 2004  
RE: INTERROGATIONS AND DETAINEE 1.4(c)

1. (TS) NATIONAL SECURITY ADVISER RICE CHAIRED A MEETING  
IN THE WHITE HOUSE SITUATION ROOM ON FRIDAY, 1.4(c) FROM 1:00 -  
2:30 P.M. TO DISCUSS AL-QA'IDA FACILITATOR 1.4(c)  
DETAINEE 1.4(c) AND WHETHER CIA SHOULD RENDER HIM AND, IF  
NECESSARY, INTERROGATE HIM USING METHODS INCLUDING ENHANCED  
INTERROGATION TECHNIQUES. IN ATTENDANCE WERE: ATTORNEY GENERAL  
ASHCROFT; DEPUTY ATTORNEY GENERAL COMEY; DCI TENET; CIA GENERAL  
COUNSEL MULLER; CIA/CTC DEPUTY DIRECTOR MUDD; CIA OFFICERS  
3.5(c) NSC LEGAL ADVISER BELLINGER; NSC SENIOR  
DIRECTOR SHEDD; AND WHITE HOUSE COUNSEL GONZALEZ.

2. (TS) THE MEETING OPENED WITH A SUBSTANTIVE BRIEF BY  
3.5(c) ON THE IMPORTANCE OF AND THE TYPE OF INFORMATION  
HE IS LIKELY TO KNOW. 1.4(c) FOLLOWED WITH A BRIEF OVERVIEW OF  
CIA'S INTERROGATION PROGRAM, INCLUDING A SUMMARY OF THE  
SUCCESSSES OF THE PROGRAM (REVELATIONS BY KSM AND ABU ZUBAYDAH)  
AND AN EXPLANATION OF THE WATERBOARD TECHNIQUE AND ITS ROLE IN  
THE OVERALL INTERROGATION PROCESS.

3. (S) BRIEFING SLIDES ON "CIA REQUEST FOR GUIDANCE  
REGARDING INTERROGATION OF 1.4(c) WERE PASSED OUT TO EACH  
PARTICIPANT AND THE SUBSTANCE WAS COVERED FOR EACH OF THEM. A  
COPY OF THE SLIDES ARE ATTACHED.

4. (TS) MULLER FOLLOWED WITH A SUMMARY OF POLICY AND  
LEGAL ISSUES THAT HAD LED TO THE HALT IN CIA'S RENDITION AND  
INTERROGATION PROGRAM. AMONG THE ISSUES MULLER RAISED WERE THE

1.4(c)

0150005

POSSIBLE POLICY DISCONNECT BETWEEN PUBLIC POLICY STATEMENTS ABOUT PRISONER TREATMENT AND THE CIA PROGRAM AND CONSTITUTIONAL ("SHOCK THE CONSCIENCE") STANDARDS AND OTHER LEGAL/POLICY

[PAGE 1]

QUESTIONS ABOUT ENHANCED TECHNIQUES. MULLER'S REMARKS WERE THE BACKDROP FOR A LENGTHY DISCUSSION ABOUT WHAT TECHNIQUES ARE APPROPRIATE, THE BASIS FOR APPROVAL AND WHAT FURTHER WORK DOJ NEEDS TO CONDUCT.

5. (TS) DURING A LENGTHY BACK-AND-FORTH AMONG A HANDFUL OF THE ATTENDEES, SEVERAL KEY POINTS WERE ADDRESSED:

A. THE ATTORNEY GENERAL REPEATEDLY SAID THAT THE ENHANCED TECHNIQUES EMPLOYED BY CIA, OTHER THAN THE WATERBOARD, ARE LEGAL. HE AND OTHERS DISCUSSED THE NEED FOR A FURTHER REVIEW OF THE WATERBOARD TECHNIQUE, PRIMARILY BECAUSE OF THE VIEW THAT THE TECHNIQUE HAS BEEN EMPLOYED IN A DIFFERENT FASHION THAN THAT WHICH DOJ INITIALLY APPROVED. IT WAS LATER CLARIFIED THAT THE ATTORNEY GENERAL WAS REFERRING TO THE NINE TECHNIQUES (OTHER THAN THE WATERBOARD) REFERRED TO IN THE DOJ MEMORANDUM TO ACTING GENERAL COUNSEL JOHN RIZZO REGARDING ABU ZUBAYDAH AND, AS OF THE TIME OF THE MEETING, THE 24 TECHNIQUES APPROVED BY THE SECRETARY OF DEFENSE ON OR ABOUT 16 APRIL 2003.

B. THE NATIONAL SECURITY ADVISER AND THE COUNSEL TO THE PRESIDENT UNDERSTOOD THE ISSUE OF WHETHER THERE IS NOW A GAP BETWEEN PUBLIC STATEMENTS AND THE CIA INTERROGATION PROGRAM IN LIGHT OF THE DEPARTMENT OF JUSTICE'S CURRENT REFUSAL TO ADDRESS THE ISSUE OF WHETHER THE TECHNIQUES PROPOSED FOR USE WITH [ ] MEET THE CONSTITUTION'S "SHOCK THE CONSCIENCE" STANDARD AND THE STATEMENTS IN THE 25 JUNE 2003 LETTER TO SENATOR LEAHY FROM DOD GENERAL COUNSEL HAYNES. THEY NEVERTHELESS REPEATED SUPPORT FOR USE OF ENHANCED TECHNIQUES EXCEPT THE WATERBOARD WITH RESPECT TO [ ] AT VARYING POINTS, RICE STATED THAT ANY PERCEIVED DISPARITY WOULD BE DEALT WITH LATER. THAT THERE WAS NO DISPARITY, THAT THE TECHNIQUES WERE HUMANE IN HER VIEW AND SHE QUESTIONED WHETHER THAT "SINGLE SENTENCE" IN THE HAYNES LETTER (THE LAST SENTENCE IN PARAGRAPH TWO) WAS LIKELY TO BE VIEWED AS SIGNIFICANT BY THE PUBLIC.

1.4(c)

1.4(c)

C. IN THE COURSE OF THE DISCUSSION OF LEGAL ISSUES, THE ATTORNEY GENERAL STATED, AMONG OTHER THINGS:

[PAGE 2]

1. THERE IS LITTLE PRECEDENT APPLYING THE "SHOCK THE CONSCIENCE" TEST IN THE KIND OF CIRCUMSTANCES INVOLVED HERE AND THAT THE CASE LAW WAS DEVELOPED IN

0150006

THE DIFFERENT CONTEXT OF LAW ENFORCEMENT CASES.

2. THE STANDARDS DEVELOPED UNDER THE EIGHTH AMENDMENT ARE INAPPLICABLE BECAUSE THE CONDUCT HERE IS FOR A PURPOSE OTHER THAN THE KIND OF PUNISHMENT THE EIGHTH AMENDMENT ADDRESSES; AND

3. THE RECENT SUPREME COURT DECISIONS DID REPRESENT "SOME LOOSENING OF THE GROUND" ON THE UNDERPINNINGS OF DOJ'S ANALYSIS THAT THE CONSTITUTION DID NOT APPLY TO ALIENS HELD OVERSEAS AS ENEMY COMBATANTS. HOWEVER, THE DEPARTMENT'S VIEW REMAINS THAT ALIENS OVERSEAS HAVE NO CONSTITUTIONAL RIGHTS.

6. (TS) DURING THE COURSE OF THE DISCUSSION, THE NEED TO MOVE QUICKLY TOWARD A DECISION WAS RAISED REPEATEDLY, AS A RESULT OF THE ASSESSMENT THAT [REDACTED] MIGHT HAVE INFORMATION THAT COULD DISRUPT THE PRE-ELECTION PLOT. IN PARALLEL, ALL AGREED ON THE IMPORTANCE OF ENSURING THAT OTHER PRINCIPALS, PARTICULARLY THE SECRETARIES OF STATE AND DEFENSE, BE BRIEFED INTO THE [REDACTED] CASE SPECIFICALLY AND THE POLICY AND LEGAL QUESTIONS SURROUNDING THE CIA PROGRAM MORE GENERALLY.

1.4(c)

1.4(c)

7. (TS) THE CLEAR SENSE AT THE TABLE AMONG SENIOR POLICYMAKERS WAS THAT CIA HAD THE REQUISITE AUTHORITY TO USE THE ABU ZUBAYDAH TECHNIQUES (OTHER THAN THE WATERBOARD) WITH [REDACTED] AS WELL AS OTHER APPROVED TECHNIQUES, IN LIGHT OF THE ASSESSED LIKELIHOOD THAT [REDACTED] HAS IMMEDIATE THREAT INFORMATION THAT COULD SAVE AMERICAN LIVES.

1.4(c)

1.4(c)

JOHN P. MUDD  
DEPUTY DIRECTOR  
DCI COUNTERTERRORIST CENTER

[PAGE 3] SUBJECT: (TS) MEETING WITH NATIONAL SECURITY ADVISER RICE IN THE WHITE HOUSE SITUATION ROOM, FRIDAY, 1.4(c) 2004  
RE: INTERROGATIONS AND DETAINEE 1.4(c)

DISTRIBUTION:  
ORIGINAL - CTC FILES  
1 - OGC

[PAGE 4]

Attachments:

Attach: [REDACTED] 3.5(c)

0150007