

3.5(c)

New Memo

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OIG

35192

05/25/04 06:23 PM

To: Scott W. Muller [Redacted]

John A. Rizzo [Redacted]

cc

Subject: Talking Points

3.5(c)

I provided the attached talking points to John Moseman and copies of our 2 March 2004 request to OIG to reaffirm its legal analyses and the summary points [Redacted]



3.5(c)

OIG talking points with AG re interrogations - alt

New Memo

0080001

~~TOP SECRET~~ [redacted] 1.4(c) [redacted] ~~ORCON, NOFORN//MR~~**(S//NF) Talking Points for DCI Telephone Conversation with Attorney General:
DOJ's Legal Opinion re CIA's Counterterrorist Program (CT) Interrogation**

~~(TS [redacted] 1.4(c) [redacted] NF)~~ **Purpose.** To ascertain whether DOJ believes CIA's Counterterrorist Program (CT) interrogation techniques would meet certain Constitutional standards were those standards to apply to aliens overseas.

~~(TS [redacted] 1.4(c) [redacted] NF)~~ **Background.** OLC's legal opinion of 1 August 2002 found that CIA's CT interrogation techniques, at least as intended to be applied to Abu Zubaydah, would not violate U.S. criminal statutes implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as ratified by the U.S. We also understood through subsequent conversations and the coordination of a written summary of legal principles regarding the program, that even though the relevant U.S. Constitutional provisions do not extend to aliens overseas, CIA's CT interrogation techniques would not violate the standards of those U.S. Constitutional provisions if they applied. We were recently informed by OLC attorneys that they have not formally opined on the Constitutional standards issue (i.e., DOJ has not issued a written, signed legal opinion) raising concerns that DOJ is distancing itself from this coordinated legal position.

It is imperative that the Attorney General either (a) confirm the legal principles set forth in the summary jointly created by CIA's OGC and DOJ's OLC or (b) identify those principles in the summary that are acceptable to DOJ and recommend what actions, if any, should CIA take with regard to the program.

~~(TS [redacted] 1.4(c) [redacted] NF)~~ **We recommend you call the AG and make the following points in your conversation:**

- I recently learned that OLC attorneys have emphasized to my General Counsel that they have not issued a signed written legal opinion on the question of whether the interrogation techniques used by CIA would be lawful under certain U.S. Constitutional provisions if they were to be applied to the CT interrogation program.
- Regardless of whether there is a signed DOJ opinion on this particular legal issue, that fact remains that the Vice President and other senior US government officials were briefed on the program. The recent OLC emphasis on the absence of a signed written DOJ opinion on this aspect of the program causes me to seek your assurance and guidance.

[redacted] 3.5(c) [redacted]

~~TOP SECRET~~ [redacted] 1.4(c) [redacted] ~~ORCON, NOFORN//MR~~

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~~TOP SECRET~~ [redacted] 1.4(c) [redacted] ~~FORCON, NOFORN//MR~~

- Are you able to confirm all the legal principles set forth in the summary of legal principles jointly created by CIA's OGC and DOJ's OLC?
 - If not, can you identify those principles in the summary that you are able to confirm as of today?
- In light of this partial confirmation, I also would like your recommendation regarding what actions I should take regarding CIA's CT interrogation program.

~~TOP SECRET~~ [redacted] 1.4(c) [redacted] ~~FORCON, NOFORN//MR~~

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