

John Rizzo (former acting General Counsel, Senior Deputy Counsel of the CIA)

8.2.12

Q: You were the acting general counsel late 2001-late 2002 and then in 04, and then you were the senior deputy counsel?

A: Yes, I was senior deputy counsel, roughly '95, '96. I was basically the number 2, well I was senior deputy. The general counsel headed by McNamara, who had come on in 1997, retired or resigned, about a month after 9/11. So I became acting general counsel about a month or so after that. November 2001. You know the senior general counsel position is a presidential appointment. So it took the white house a while to come up with another candidate. He finally came on November 2002, so I was acting for that 1 year. That general counsel was Scott Muller. He lasted about 15 months, maybe 16, something like that, and then he resigned in July 2004, and here I am back again as acting general counsel. And of course I was formally nominated for the GC position in March of 2006...didn't work out...very contentious, ended up withdrawing the nomination facing certain defeat, and then promptly went back to being acting general counsel. So basically that's it.

Q: You served 5 months into Obama admin?

A: Longer than that. My replacement arrived in July 2009, he asked me to stay on for transition, so I didn't actually leave OGC until late 2009. So nine months.

Q: Going back to how much your job changed after 9/11, people can be very protective of their "kingdom." Thought it was very shrewd of CIA to involve OLC early on...was that solely your decision?

A: I'd been OGC for a long time at that point. I mean 9/11 was such a paradigm shift. I mean during my career we had never run a secret prison system let alone an aggressive interrogation program. It was all a tabula rasa. You know, our office and I had worked for the OLC from time to time over the years and OLC, it was a place that always agreed that when there were significant legal issues of first impression that presented significant policy and legal risks, that the agency OGC would consult with OLC to get a definitive legal judgment...that was pretty important for the executive branch. So when in the spring of 02 when my clients in the counter terrorism center came up with the idea of an enhanced interrogation program, specifically the techniques, I made the decision as soon as I got the briefing on what these were, all of which were just totally new and alien concepts to me...I mean, I had no idea for instance what water boarding was, maybe *inaudible* had some knowledge – SERE training - I had never served in the military so it was really, clearly unprecedented. Mercifully, I had never had to think or worry about the torture statute, and some of the techniques, to my unschooled ears, if they weren't torture they were certainly very harsh. So I decided more or less on the spot that before we could even consider doing something like this, we needed to involve the office of legal counsel and obtain definitive, detailed, written legal guidance. So that's what I decided, and frankly, it was a fairly easy call.

Q: Had you seen predecessors at your time in the agency, you know with legal issues that also involved policy questions, that you had seen predecessors do the same:

A: Yeah, you know, I basically grew up watching and observing my boss *inaudible* the years, follow that course of action. As far as I could tell, he always did that.

Q: You mentioned that you'd wished Congress had been more involved/informed, but that you were dutifully, at least the executive made evident, that that was not the best route to go. Can you talk about that process?

A: Well yeah, I mean, the decision was made by the white house, it was their proper call to make, to limit notification of the program, of the EIT program, to the so called Gang of 8, the Congressional leadership. That was a white house call that they made, and I think in retrospect, in hindsight, that was a mistake. And actually, that thing was kept in that small compartment for almost 4 years. It wasn't until September of 06 that the program was actually briefed to the full membership of the two intelligence committees. And I had been around long enough and dealt with enough Congresses and CI scandals, you know I should have in retrospect, I should have pushed back harder and earlier at the white house than I did, to get approval for us to be able to *inaudible* this program. It was just, I had lived the covert action program for virtually my whole career to the extent I had a experience and expertise in that arena, so I was very familiar with the whole Congressional notification process. You know, gang of 8 procedures are useful sometimes, it's necessary, for matters of extraordinary sensitivity. But the gang of 8 process is very hard to sustain for a program that lasts indefinitely. It involves a lot of money and a lot of people. The gang of 8 is best used for these on-off, one shot, like the operation against Bin Laden. That was a classic gang of 8. To conduct a major, ongoing covert action program like the prison program and the EIT program, you simply can't sustain it for that long, and you shouldn't try to keep those *inaudible* up.

Q: Were you involved in any of those conversations at the white house or did word just come back to you.

A: I lived this thing, everyday virtually for five years. I had good relations with the folks at the white house. So no I was fully engaged, fully involved with the process. As I said, I should have personally pushed back harder, earlier.

Q: When you say you should have pushed back harder, what would that have entailed?

A: What I should have done is go back to the white house counsel, originally it was Al Gonzalez and then it became Harriet Miers, and David Addington who was there throughout. David and I had known each other at that point for 20 years. He used to work for me at the CIA. So I could have...and I met with those guys weekly. So that would have been the vehicle I would have chosen. And of course the CIA directors at the time, first Tenet, then Goss, then Hayden, could have supplemented that message by going back to their level, to the national security advisor, even the president, or the vice president.

Q: When you say ultimately it was the white house decision about the gang of 8, that would have been Gonzalez, Addington, and yourself...those were the kind of discussions that led to that decision about the notification?

A: Yeah, but keep in mind that all covert action programs ultimately belong to the President and the white house. It's not just CIA that sort of makes these policy decisions. For instance access to the OLC memos, who's going to be involved in the coordination process for the OLC memos, who would see them and draft all that. That was all dictated by the white house.

Q: The OLC memos..how did the agency ensure that the guidance in the memos were followed?

A: What we did was, well, every time we got an OLC memo—the first one was the most consequential, it was the so called Bybee Memo, the one that was August 1, 2002. That was the original approval for the original set of techniques.

Q: You mean the one that discusses the techniques in detail.

A: Yeah, you know, not the other Bybee Memo. There's been some confusion over the years. But this is the Bybee Memo that was addressed to me. What we did as soon as we got that—as you know, it was a very detailed memo *inaudible* a lot of excruciating detail in there, sort of no ambiguity. We literally translated that memo into guidance to the field, guidance to the facility where the detainees were being kept. So it was literally translated into operating guidance.

Q: On Sept. 10, there was a real limited body of knowledge within the CIA about interrogation and detention. Sounds like the CIA goes about contacting the-SERE-to gain experience. Can you talk about that decision about how the CIA would gain expertise in the area.

A: I know that happened, but that was the people in the operations...the CTC. How they decided to go to the people they decided to go to, that I wasn't privy to. We had lawyers in the counter terrorism center who probably know more detail about this than I do. My first insight into what was being discussed is when the CTC came to me and said these are the techniques that was based on SERE training procedures and these are the ones we think will be the most effective.

Q: Probably speculation, there was probably somebody from the service that had had experience going through the program themselves:

A: Yeah, there were people who know, who had some higher knowledge of this.

Q: There is data from different psychologists and knowledgeable academics in the area of psychotherapy...when I say that, are you aware of what that is? I'm unaware of data that the use of EIT's works...

A: I might have, but it wasn't SERE program data. I distinctly recall CTC tell me that they had some data to indicate that these techniques worked and produced reliable intelligence.

Q: But you never say that, you just the data that came from the use out in the field:

A: Yeah

Q: That data was in the form of classified intelligence reports.

A: Yeah, classified intelligence reports, and sometimes raw cable traffic. At an interrogation session, they would write up detailed reports after it. Initially, that was what led to the initial decision that *inaudible* began to video tape, because our folks, this was all new to them. And the CTC made a decision, I think in conjunction with the field, that they wanted to make sure they got everything down, they didn't want to miss anything. Plus Zubaydah was badly hurt, and they didn't want him to die. So as it turned out after a month they concluded that they didn't need to do the videotaping. But the videotape idea was originally conceived as a way to prepare the most detailed reports back to headquarters. And I can't tell you I saw them all, but I saw a lot.

Q: And typically, the reports, an analyst will condense reports into a more readily digestible form.

A: Yeah

Q: Have you read Ali Soufan's book?

A: Parts of it

Q: Well, one of the things that he told us, and his version is that if his notes were to be declassified, that they would demonstrate he was getting effective, actionable intelligence from Zubaydah before the use of EITs. He also says that when people are presented with the intel reports from field, that it's so classified I can't even read it in my own office, I have to be taken to a scif, and then I read the doc and it says we've saved 100 of thousands of lives, that it's understandable that a person would think the use of EITs were effective. My one thought was how did the CIA deal with people in the field sometimes giving intelligence reports that they think their bosses want to hear as opposed to the actual intelligence. Does that make sense?

A: {Laughs}...I had actually another front line program that was primarily devoted to Soufan...his book came out, and they asked me to come on and to provide the contrary view. So I haven't read his book, I don't think I've ever met him, but I am familiar with him, with his contentions. I'll just tell you what my...I trusted the people that were conducting the program, not just the people, the interrogators, but the analysts that were taking the information, vetting it, preparing it into other reports. I mean these were long time CIA career people. As a lawyer, to a large extent, you have to sort of rely on the integrity of the people gathering the intelligence. So if the question is how did I protect against information being given just to please one's superiors, I mean I'm not an intelligence analyst. I trusted, I knew the people who were doing this, I trusted their integrity their judgment. When they conclude that the information they were getting is reliable and actionable, I agreed to accept it.

Q: Were there any particular info that was especially striking, like attacks prevented...

A: Well, I guess it's all personal perspectives. The information that was required about the possible Al Qaeda efforts to acquire a WMD, those are the ones that stick out because they are the most frightening. You know they would come in these tantalizing fragments—there was never a smoking gun—but those I remember vividly.

Q: This is the stuff with the *inaudible*. Not the al-Libi claims?

A: No, it's the *inaudible*. That I remember. I always remember obviously the information against the LA, what's that called [Interviewers say ... "the library tower" ...]. And of course I remember those types of information, about the London threats against Heathrow. So episodically I remember specifics. But I mean we would meet every 5 o'clock at night in the director's conference room, basically had to go over all this intelligence that was being acquired. So we were, I was inundated with these, listening to it, what had been discovered for weeks, even years.

Q: And were these meetings...was there a time frame when the EIT was being used?...Just general 5 o'clock meetings every day.

A: Yeah...before 9/11, *inaudible* like with the Clinton administration it'd be more serious and imminent than previous, these 5 o'clock meetings started but they would be two or three times a week. After 9/11, they were every night at 5 o'clock, and everyone would gather that was involved in the counterterrorism program across the board, not just EITs but the covert action against the Al Qaeda financial structure. The paramilitary war in Afghanistan. It was basically a daily summary of what everyone was doing and what new intelligence was being acquired.

Q: What do you make of the public tiff since Rodriguez's book came out, there was a statement released by the Senate Intel committee, where they said no actionable intel was produced as a result of EITs. What do you think of that?

A: Well, they made that statement, they still haven't issued the report. I imagine a part will be classified, they've been doing this for four years or something. Soon, maybe there will be a public report issued. So I don't know what the details are. I mean, I guess the Senate Committee, it's hardly surprising, its only being issued by the Democrats of the Intelligence committee, there's no republican participation. The democrats in the committee for years have made no secret that they oppose the program. But keep in mind, after the take down of Bin Laden, even this administration, albeit grudgingly, conceded that—Leon Panetta did, Tom Collins did—that information about the courier, that was ultimately the path to Bin Laden's location. Some of the information about that courier, started as a result of the enhanced interrogation program. And it's debatable, it will never be resolved, I don't think this kind of report is going to resolve it. And that was *inaudible* he said, I mean this *inaudible* statement, nothing was ever acquired of any value. I mean there were some, it just is I'm skeptical about, well, none of this stuff would have been acquired *but* for the enhanced interrogation program. I can't say that. Maybe a lot of it would have, ultimately. But a lot of that's unknowable. I can't, you know, how long would it have taken in 2002. ...I mean how long would a normal FBI, Soufan's process, how long would that take before the threat information would have been yielded. SO that's what I find.

Q: Your critics say, well Bin Laden killed in May 2011...gap in years. Was there instances you saw intel where there wouldn't have been time. Is time an appropriate factor that people should consider when deciding about the effectiveness of the techniques.

A: Well, to answer your question, can I think of an instance where some information came out of the interrogation session that led to a take down, that there would have been some attack within 24 hours or 48 hours. I don't remember that ever happening. The information that was acquired was about planned threats. But the key thing was that the information was acquired. And even if the threat wasn't going to happen for months or even years, I think is beside the point. If you can squelch a plot before it begins, I mean why not? Why wait til the ticking starts before moving. With Bin Laden, it took a long time, I mean, they were trying, they were trying to kill themselves for 10 years trying to get any sort of information on his location. I mean, intelligence is a painstaking process. Putting together different threat matrixes, and Al Qaeda practiced extraordinarily good trade crafts, especially so far as Bin Laden was concerned.

Q: Would you favor that the intel committee, if they're going to be critical of these techniques, that they declassify as much as they can.

A: Well, I can't imagine that they would just declare a statement that the program that went on for five years produced nothing of value and then say nothing else.

Q: Debate will continue, but do you think it would be helpful now, for there to be further declassification.

A: The argument originally was don't declassify any of it. There was such opposition to declassifying OLC memos, at least those parts that discussed the techniques. But that decision was made. And now that this much has been opened up, yeah...and this controversy has gotten very long legs. So I'd be for declassifying as much as possible.

Q: Comments that critics will say that defenders of program are those who oversaw EIT program. Should Americans be skeptical just on that basis, and if not why?

A: I chose to get involved in this thing, I chose to get my name put on the nation, I became a fulcrum for a lot of the debate and controversy. But not so much me. It's the 100s of people, people I had known for years and years at the CIA, who were involved in this program, both on acquiring information and then analyzing it...I mean these are career people, and some of them didn't like the Bush administration at all. They consistently—and they were asked—whether this program is yielding important, reliable data, actionable data...they believed in the program. To me, and I'm going to address this in my book...there are previous arguments on how many thousand intelligence reports or Soufan arguments about how they got it all before hand... I mean, who knows, it just keeps going around and around. To me, what sustained me, it was the people who were involved, the lifers, the career CIA people who were involved in this program believed in it. And they not *inaudible*, they knew as it was getting increasingly controversial, that they were likely going to wind up in investigation, and recriminations...they knew all that. And yet they were steadfast in believing in the value of the program. So it's not so much that--- when you say defenders of the program, and we had public figures like me or former CIA directors—but those are the people I think about. That's what convinces me that the program was in fact...

Q: Did you think that the...in Rodriquez's book, he criticizes the OIG report that became public...do you think that report was fair?

A: Did you read Jack Goldsmith's book, *Power and Restraint*? Well you got to read that, it goes into all this stuff. So I'll tell you what I told him. I thought the OIG report was pretty balanced. I didn't think it was such a hatchet job. I had know John Helgerson for years. He was a man of integrity. I mean he didn't like the program, he made no bones about the fact he didn't like the program. From a moral standpoint he didn't like the program, and he thought it was going to get the agency in trouble, and he was right about that. But he was a straight shooter, and the report certainly had its criticisms, but it also said, forthrightly, that it appeared the program was yielding important intelligence. What it didn't say was that they could find any particular technique that was yielding—like waterboarding—and it's difficult to quantify these techniques, which ones work and which ones different. But on the whole, I thought it was a balanced fair treatment. And it was largely investigated and written in 2003, when everyone was still new to all this, including OIG.

Q: There's narrative amongst critics, that career people at CIA are the ones that led to the IG report, they are critical of program. Was there real dissension in CIA or not? Is that a reason to argue that people were against it at time?

A: Honestly, I mean I was up in the 7th floor, but I knew most of the people, not just the top people, but the people who worked in *inaudible*. I'd like to think that during that period, if someone had serious

concerns about the wisdom, efficacy, morality...I would have heard about it. I never heard anything, anything.

Q: OMS said they weren't consulted early on

A: I wasn't there, but they swear they consulted with the office of medical services. The largely quoted the head of the office of medical services at the time who retired shortly thereafter. I can't say, but I know, because I worked with some of the doctors who were involved in the program, that they were consulted from the beginning.

Q: From first techniques memo, it's unclear whether reference to "medical professionals" means someone from pure medical realm or just psychologist?

A: There was a mixture, there were some psychologists involved. And there were medical professionals there from the beginning. And of course it began with Zubaydah, and he had been previously wounded, so there were doctors already there, but in terms of overseeing the program, there were always medical people. I know there were psychologists there and physicians assistants. I believe doctors would go through periodically but I can't say that MD's were there constantly.

Q: Even when it's Zubaydah's EIT, it's not just psychologists?

A: No, I want to say, especially since he was the first one, and people wanted to be extraordinarily careful, I believe there were medical doctors from OMS onsite. I can't say that was the case in subsequent years for other detainees.

Q: The DOJ OPR report. Section talks about when Chertoff says we can't offer advanced declinations of prosecutions. What were those discussions? What struck you about their retelling?

A: I agreed to be interviewed by the OPR. I didn't have to do it, but that was my duty. They quote me extensively, so I played the role, I had my chance. And from what I read in the report, that's exactly what happened. Because I was *inaudible* I had known Chertoff for a long time. We had two meetings, one in April, one in June, the first one in April was *inaudible* this was the program was just being conceived. And June was later on--John Yoo was drafting the memo--it was a follow up meeting. One of those two meetings, I think it was the first one, Chertoff was there, and it was I who raised the issue of advanced declination of prosecutions. And he summarily rejected it, he said 'we don't do that,' so that's absolutely correct. And the reason I raised it was that *inaudible*. It was sort of straps and suspenders idea. It was worth a shot. I wanted to get maximum protection for our people, depending on what was going to happen down the road. I think a lot of us, not just me, but I certainly shared this, knew from the beginning, that someday, somehow, this was going to turn controversial. This was a whole new realm of activity, so I wanted maximum protection, so I posed the question. No one put me up to it.

Q: Had that been a situation that other CIA general counsel...

A: I can't say that there was any precedent for this. Typically, to the extent that we go to the justice, it would be to ask for a declination of prosecution after someone's done something, if they were acting in good faith, and he had no criminal intent. But this was trying to get a pre declination.

Q: Were you involved in after the fact declinations?

A: Yeah sure, I was heading the office. I wasn't part of the discussions. Those were shipped off to the eastern district. And they kept us posted on their review of those cases. And they would ask for documents and that stuff, talk to people. So I was aware of all that, but I didn't make any presentation to them about 'do or do not prosecute.'

Q: OPR report mentions a declination memo prepared by CTC?

A: No, we wouldn't do declinations. It's not our role.

Q: Did you oppose decision to appoint Durham to look into, reopen some of those cases in 2009?

A: Well I thought it was a bad idea. Durham was originally appointed to investigate the tapes, I was in no position to oppose it at the time. And I wouldn't have opposed it, I understood that they needed to do that. I wasn't consulted reopening those old cases, it was a decision by the Obama administration and the attorney general. We were not consulted, we were just told that we were going to do it. We weren't given an opportunity, I thought it was manifestly unfair frankly, I mean these things had reviewed by career prosecutors twice, the attorney general himself said he didn't bother to review the declination memos, and at some point, the investigations have to be over. People have to know that it's over. And these career people, not just the ones who engaged in wrongdoing, but when they investigate one of these things they drag in everybody for interviews, grand jury appearances. At some point, these people at the working level have to have some sense of finality.

Q: Do you know why prosecution was initially declined?

A: As I recall it was *inaudible* evidence, you know foreign, desolate lands, *inaudible* witnesses, and also frankly passage of time, because some of these things even back then had happened several years before.

Q: So I read your piece you wrote to the Hoover institute...you talk about there being very detailed guidance on the EIT program, and less guidance for...

A: Yeah, that was a mistake. Most of the alleged abuses did not take place under the auspices of the EIT program. They happened with respect to interrogations that did not involve EITs. Actually, a couple of them were in locations that were not so called secret prisons. They were other detention facilities, but they were not involved in the EIT program. And we concentrated so heavily on the EIT program, how that was administered, that there were these other detainees who weren't part of the program being interrogated by people who weren't as well trained or experienced. I thought that was a mistake, we should have realized, I should have realized, that we needed to pay close attention to all the detainees.

Q: Is any location in Afghanistan part of the EIT program?

A: No. We started to edge into an area now that has not been declassified.

Q: You talked with Jack Goldsmith a couple of times. Can you talk about the process. What your reaction was in OGC when the legal rationale on the program was revoked? Were you upset that justice was walking away from guidance they'd given you?

A: I wasn't upset. This was during the time frame that Scott Muller was there. Scott was very upset. He thought had had an agreement with Jack and Pat Philbin, that that points paper, had OLC's *inaudible* to it. To tell you the truth, I wasn't privy to those back and forth discussions. Scott was convinced that they were moonwalking away. You know, knowing Jack and knowing Pat, they say this was not an OLC document, this was a CIA paper, and they never gave it the official OLC stamp of approval. And I believe that. I know how rigorous OLC is about its product. They write these long detailed memos, they vet it. I can certainly understand it, it's certainly plausible to me that they wouldn't feel themselves bound by a sort of summary that was written at the CIA, whether they'd seen it or not. I liked and respected Scott, but I never thought OLC backtracked.

Q: Did you find the subsequent memo that Steven Bradbury produced and that Levin produced...how did that strike you?

A: I always accepted all of the OLC memos. Honestly, I thought these lawyer were honest, and integrity, and smart. I don't think John Yoo, I don't think he *inaudible* with this total results oriented approach. So I don't doubt then, and I don't doubt now, the rigorous nature of the legal analysis. Now people can disagree with it, but I always found it authoritative and persuasive. If I hadn't, I wouldn't have allowed the program to continue.

Q: some people have said Yoo's memo's were more advocacy. Is that fair?

A: The one that was addressed to white house counsel that had the 'organ failure' language and all that. I mean I read that, and I remember thinking 'boy this is out there,' the rhetoric is not—it read more like a law review piece to me than a legal memo. It struck me as an aggressive interpretation of the statute. But I was always guided by the.....the classified memo to me, the analogue to that legal analysis, the one that Bybee signed off to me on that same day that went through all the techniques, I always paid much more attention to that one, that was the one that was really guiding us, and that of course didn't have any of that rhetoric. Now Bradbury's memos, now, he's a very careful guy, he has no ideologue, they were thick and daunting. So I found them persuasive.

Q; What was legal guidance that field officers had in Afghanistan and Iraq. Some of the Iraq reports said the Geneva Convention applied.

A: Well it gets murky when Iraq is introduced to the equation. Keep in mind that the authority we had to detain and interrogate prisoners was based on a counter terrorist rationale. Iraq, we get murky...which of these guys were Al Qaeda related and which were just pure and simple insurgents. The CIA did not have the authority itself to detain Iraqi prisoners, unless they were Iraqi-al Qaeda affiliated people. But the CIA had a heavy presence in Iraq. The military certainly allowed CIA access to its prisoners, the ones they thought might have intelligence. Not necessarily counter terrorism intelligence, but Iraqi intelligence about Iraqi WMDs . SO CIA was involved in Iraq and Iraq detention actions, but had no authority itself to capture and hold Iraqis. Obviously there was some overlap there, I mean there were some abuses. One of the cases that was being reinvestigated by Justice involved what happened in Iraq. The Geneva conventions did apply with respect to the Iraq conflict. [Q: You mean, Geneva 2 applied to the wounded and sick, do you mean Geneva 4?] ...You guys know far more about that than I do. The point is that the Iraq prisoner issue is much more complicated.

Q: Press stories about some station chief getting fired after...so that was in ...but also press reports that there are special force facilities, that CIA personnel were told not to have contact with certain task forces or facilities.

A: Well that's possible, it was an immensely complicated situation. The CIA station chief—there were two other CIA officials—they were fired because they went beyond the guidelines. They started participating in these interrogations. They actually were capturing, helping the military capture Iraqi prisoners, and then lied about it.

Q: What were the guidelines?

A: Don't hold prisoners yourself. Defer to the military on questioning. Only participate when invited to do so. Don't try to force yourself into these interrogations. Obviously no enhanced interrogation techniques. The bottom line of the guidelines was defer to the military; these were prisoners under their control, their auspices. Help, support them, when you're asked to participate in interrogations, do it, but just stay a step back.

Q: But do line agents in the field understand that.

A: Well, we sent the requisite detailed cables out there. As I say, there's either some people who didn't understand it, or choose in the heat of battle to go beyond it.

Q: The DCI guidelines for the CTC program.

A: I was part of the program that's been revoked so it's all out there. It's Scott Muller's credit. He arrived in 2002. He really took the lead to work up those guidelines. I mean I was involved, but I remembered this big exercise, the first major time Scott really got his feet wet on the CTC program.

Q: Bradbury's memo's make reference to a CIA efficacy memo. Most of it is redacted, but it seems as he's doing his Constitutional analysis, he talks about a lot of the gains that have been gained through this memo.

A: I saw it at the time, but it was largely done by the CTC analysts, and our CTC lawyers were involved. It was at the request of OLC. It was largely an intelligence assessment.

Q: Would OLC talk directly with CTC or would they go through you.

A: Well they would talk directly with CTC lawyers, and if they wanted to talk to CTC analysts, we would certainly allow that as well. But the CTC lawyers were largely the day to day focal points on these legal memos in terms of what OLC needed in terms of additional information and things like that.

Q: Libyan gentleman—Abdel Belhadj—claims that they were rendered by the U.S. even when the US knew that they were not Al Qaeda members. He said he was anti-Gaddafi, and as the US tried to nurture a better relationship with Gaddafi, he was turned over to Gaddafi. Can you discuss about the rendition that was being done by US to individuals who were not in EIT program?

A: I'm not aware of any renditions other than terrorists renditions. We certainly wouldn't render people to try return or try to incur favor with the foreign intelligence service. For what it's worth, I never heard

of this fellow. I can't tell you it would never happen. They get a number of renditions out there, there's this notion that hundreds of these things were happening. The only renditions I know of to Libya were people already in the interrogation program. Several have been al-Libi's in the program. A couple of them as the program as being wound down in 2006, the idea was for the other prisoners...to empty the prisons, and send them back to their home country. A couple in that group were Libyan nationals. But just as a general matter, I'm certainly not aware, and there would have been no legal authority to conduct a rendition for the purpose of incurring favor with a foreign legal....

Q: Terrorist rendition program began under Clinton Admin, in 1995, are there earlier ones? To foreign custody...

A: Carlos the Jackal was rendered in 1994. Was not a CIA rendition per se. But CI worked closely to identify Carlos' location in Sudan and facilitated that rendition. *Inaudible* of course this is a CIA shooter in 1993, a guy who shot and killed 4 people; he was basically captured in Pakistan and rendered back to the U.S. to face justice.

Q: Renditions to countries where you would need to seek diplomatic assurances because of the torture issue.

Q: There have been public criticism of program...are you aware?

A: The notion of a policy that outsourced torture I just think is preposterous. We just don't do that. We never have done that. Now it's true that there were individuals who were rendered to countries like Egypt or Syria, where there's a very brutal security force. [????][1:07:49-51], they had incredible assurances. I do know of times over the years in those cases where CIA learned that the foreign government was abusing the person, there were three times when all CIA assistance was suspended. These foreign governments, no matter how brutal they were, when we would deliver someone into their custody, and sought and obtained assurances, they tended to pay attention to those. They may have been beating the hell out of their own political opponents.

Q: Every case I know of there's been allegations for every rendition to Egypt/Syria.

A: I know that. I'm not objective, but I find those not credible. Morocco was another one....

Q: Do you find them not credible across the board?

A: No, no, I think there might have been....I can't say it's perfect. I can't cite you with a specific case where I think someone was tortured. But I think the extent to which the abuse of detainees rendered...I really think it was miniscule. And some of the claims have been vastly exaggerated. CIA would never...believe me, they did everything in their power to prevent something like that.

Q: What were the repercussions of the Al-Libi case?

A: Well, I can't get into that....

Q: Well, I was interested in the cutting of CIA assistance.

A: Yeah, there were ongoing training programs. ...ongoing intelligence exchanges.

Q: I assume you can't tell us which countries those are?

A: Well they were the countries that you'd expect. I'm including Israel in that by the way. But the policy, it worked. But obviously it wasn't flawless. You could never absolutely know for certain what happened to a guy once he's delivered into foreign custody. You can't be with him every minute of the day.

Q: What monitoring was there? Would people have contact with the detainees?

A: Could be that, could *inaudible* meeting with the detainees to check on their welfare. Could be penetration of the intelligence service would finally come back to you and give you the real story...if you're getting some of the story... "oh we're taking care of the guy but we can't let you see him" and then we heard back from the penetration, which happens, that you need to know that this guy is being abused. So there's different ways to learn about when that happens. But honestly, I think these claims by and large are grossly exaggerated.

Q: Any countries that have been unfairly maligned? Are claims about Syria more credible than the claims about Egypt.

A: Can't say...there were all very brutal, oppressive regimes.

Q: Rodriguez's claim...he said I was told I have no recollection of you ever sharing with me Harriet Myers views except for being told orally that she had not yet given her ok, and there was one email. Is it possible he could not have been clear what the instructions were?

A: No, he would talk to me and ask me on a weekly basis. Maybe he doesn't remember, but I certainly do. One of the reasons I was so angry when I found out he had done it, were the previous three years I had tried to be an honest broker with him, and listen to his complaints. I never doubted his sincerity and the reasons he wanted the tapes destroyed...I never doubted that, but I would be a sounding board. He didn't want to go to the director, he didn't want to go to the *inaudible*. So I was like his guy, I'd known him for years. So I'd listen, and I went to the white house, and dutifully raised it, raised it with everyone. I gave it an honest....I mean I thought it was a lousy idea, but I gave him fair hearing. But as I said we would take about it at least once a week because he would keep raising it. So one of the reasons I was angry was that I tried to play straight with him and at the last minute he goes around my back and does it anyway. So I found that entirely disappointing.

Q: Did you ever see the tapes?

A: Never did.

Q: Do you know when we stopped?

A: It was literally three weeks after... Zubaydah was the first one...

Q: Three weeks after the approved EIT...

A: Yeah, he was the first one, he was the test case. He had recently gone through surgery, he was deemed medically fit.

Q: I was wondering about the monitoring of the interrogations themselves.

A: Well, certainly with him, there were medical doctors there monitoring the interrogation, but they had *inaudible* there were videotapes...supposed to make sure they heard the information correctly and also have a visual record they weren't abusing the guy in case he died on them. But it was after three weeks or a month. It wasn't just the EITs; they were taped 24 hours a day, I mean it was taped basically the entire time they were in custody. Nashiri's sort of the next big fish we caught. We started to tape him, because he was approved for waterboarding. Now Nashiri was a little weasel, a real tough, mean guy, but he broke immediately. So there was nothing really on these tapes, there wasn't much in the way of EITs, I don't think there were ever actually *inaudible*. If he was waterboarded it was only once very briefly. Zubaydah had a significant waterboarding session that was taped, but about a week into Nashiri's interrogation. And this was approximately mid-September. And the people in the field determined they didn't need to do it, the videotaping. And then they got worried, and 'what the hell have we done here? What do we do with this now?' And it was almost immediately they began lobbying to destroy the tapes.

Q: So did they stop taping Zubaydah before they stopped taping Nashiri?

A: Well they were both in custody at the same time, they overlapped. They taped Zubaydah for about three weeks. The EITs only lasted as *inaudible* ten days or so. But again it was 24/7 taping of Zubaydah. Nashiri gets captured, they start to videotape him—they say they originally were going to videotape him because they thought they were going to have to do EITs on him. Apparently they did not have to. And also, about that time, they had this epiphany, "what are we doing this for, we don't need to do this." So they stopped the taping.

Q: Abu Zubaydah's counsel has claimed he's had brain damage as a result of the EITs, and some of the OMS documents have what sounds like a description of a particular waterboarding...are his counsel being honest?

A: His mental state now I have no idea. It was just constant monitoring at the time he was in custody. I mean, he was an odd figure by any account anyway. Psychologically complicated, but all I can tell you is our people were satisfied that the techniques performed on him did not have any lasting medical damage.

Q: Did any of the doctors or psychologists ever object. There's an account we found of one psychologist leaving.

A: Again, I did not hear that. It could have happened. It was understood that no one had to participate in the program, whether it be operators, or analysts, or psychologists, if they really had moral objections to it. But I never heard of any such thing. But I'm not saying....an isolated case, it might happen.

Q: Do you think it's been a mistake for the Obama administration, or do you think it was mistake in Bush administration when the EIT program was discontinued?

A: No, I understand why the Obama administration discontinued it. But in 2008, the program had been pared back significantly. There was no more waterboarding, it was in umbrella terms benign. Other than Bin Laden and Zawahiri, the number of high value detainees still out there had declined. So one could

argue about the wisdom of the program. I think it was a mistake to eliminate a couple of these options in some form, but I understood why it was done. It was the political reality.

Q: Do you have any thoughts about the current administration's HIG?

A: What is it? It's a Potemkin Village that captured one person in the last two years. I get asked that. Are they killing all these people? Did they step up the predator program because they didn't have a detainee program anymore. They couldn't really capture them anymore, so you take bad guys off the streets to kill them. Whether that was a cause and effect, I don't know. All I know is that the number of high value detainees captured is, I think there's one. I think the administration said they had one. And they stuck him on a ship and circled him around for a while, is that it?...I also find it interesting that the Obama administration has been fighting tooth and nail to provide OLC memos to Congress on the killing of American citizens. After throwing all the interrogation memos out the door. I'm talking about the internal deliberative processes that they find so important to maintain.

Q: We talked about the Senate intelligence committee releasing more intelligence from their report...are you also in favor of the Obama administration releasing OLC memos on the issue of the drone strikes?

A: I don't know what they have in terms of OLC memos on the drone strikes. There apparently is such a memo on alAlaki whether US citizens may be killed, how many lethal actions taken against him. I think that's an important issue, and I would think that there is a public interest in knowing what the rationale is. As you know, Harold Koh and the attorney general and others made speeches sort of outlining the rationale. It certainly hasn't been any secret that they were behind killing alAlaki so at this point and time what is the harm and damage of releasing OLC's legal rationale? But I don't know, I don't even know if there actually officially is such a memo. All I know is what I read in the paper.

Q: What have we not asked you that you think would be important for us to know?

A: So let me understand what the Task Force is up to...is it your role to see if there is a viable interrogation program that the US can and should undertake at this point in its history?

Q: Well, one of the things that we're writing about is the high value interrogation group, and I don't know ultimately what recommendations the task force may choose to make about the countries interrogation program going forward...hope to talk to HIG, experienced interrogators.

A: Well, I'm the lawyer, I'm not an interrogation expert, but you know the current standard is the Army field manual. And you have the torture statute. Now there's got to be something in between. I think the administration, one of the purposes of them creating this HIG, is that there could be some lawful techniques above and beyond the army field manual, that the US government should adopt. As far as I know, that's just never happened. As a citizen, I would personally urge that the relevant legal and policy minds get together and see if there's something more than the Army Field manual. It can't be the *inaudible* across the board.

Q: Did you ever hear from people in the field about concerns with the manual?

A: Well, the concern was, why are we even doing it with the CIA, you know, they know the standards there. Why do you need CIA on such a program? What do we bring to the table?

Q: In Afghanistan, was it same situation with military taking lead in interrogation.

A: Some, some, but at least in the early years the real focus was on the al Qaeda presence in Afghanistan. But the military and the agency largely stayed in their separate lanes. No military officials or interrogators were ever allowed in the CIA secret prisons.

Q: But the Afghan ones, I know that some of the Bagram interrogators seem to have had contact with some....

A: Well there were some analogues to Iraq. The military detainees held at Bagram, the CIA analysts would the military allow them access to some of the detainees on a case by case basis. And if not, allowed to observe the military questioning or provide questions, or participate in one way or another. So there was some of that in Afghanistan. Iraq was more complicated legally because of its status and the invasion.

Q: The DPI guidelines...they require headquarters approval for certain techniques. Could someone on the ground in Afghanistan thought he had clearance to use...

A: Well he shouldn't have. I'm not saying it didn't happen...There was several internal reviews done as the whole Abu Ghraib was exposed, all of that. And some of those reports, as I recall, did say that some of the techniques from the EIT program somehow bled into Guantanamo, bled into Iraq. So maybe that did happen. People would go from Afghanistan and then when the Iraq war started were transferred to the Iraqi theater. And they probably *inaudible* what was in their heads. I'm not denying instances where decided to use what they had learned. Anyway, now in terms of CIA, said that publicly *inaudible* not to get into the interrogation program again. We had done everything, I thought I had done everything, to cauterize and get all the legal and policy authority necessary to protect the agency and protect the people who were carrying out the program, but it wasn't enough.

Q: Do you still talk with people in the agency? What has been the effect of all the controversy?

A: Well this investigation is still ongoing. You say two cases, but it's not just two people being affected. Many people get interviewed repeatedly, get called into grand juries, have to obtain legal counsel. It's a corrosive experience, and it's not over yet. So there's a lot of lingering resentment that the agency is being persecuted for political purposes.

Q: Do you think that's accurate?

A: Well, these cases should never have been reopened. At some point you have to say, enough is enough. I think that was unfair that the administration would do that.

Q: Even if it was a homicide that was unauthorized? Still unfair?

A: Well how long do you have to investigate? How many US attorneys do you have to bring in? I can tell you, there was no new evidence gathered, it was simply the same case file that career prosecutors had reviewed twice and declined.

Q: Were they different prosecutors each time?

A: One was from the Eastern district, and another was the internal criminal division. I think they gave it to the internal security section. So it was done twice. I can't remember which one was first....At some point, people in the Intelligence committee have to know that something is over, and can look forward and not backward.

Q: So the general decision to look forward and not backward is one you support?

A: The question is what's forward? Right now you've got the Army Field Manual as forward.