



URGENT: Question the Justice Department Inspector General on the Roles of Secretary of State Rice and State Department Legal Adviser John Bellinger in the Torture Issue

New Inspector General Report Raises Questions on the Role of the White House National Security Council; Adds to Concerns Raised by a Recent ABC News Report on Rice Chairing Meetings that Approved the Use of Torture

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Honorable William D. Delahunt
Chairman
Subcommittee on International Organizations, Human Rights, and
Oversight
Committee on Foreign Affairs
United States House of Representatives
Washington, D.C. 20515

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Dear Chairman Delahunt:

The American Civil Liberties Union strongly urges you to question Justice Department Inspector General Glenn Fine, at the subcommittee hearing tomorrow, on the roles of Secretary of State Condoleezza Rice and Legal Adviser to the Secretary of State John Bellinger in the torture issue.

The IG report on the role of the FBI in interrogations is the first government report to tie Secretary of State Rice to White House discussions on the use of torture, and the first government report to provide a detailed account of information provided to State Department Legal Adviser Bellinger on the use of torture at Guantanamo Bay. In addition, the IG report discusses aspects of the role of the National Security Council and its Principals Committee and Policy Coordinating Committee in interrogations and torture. At the time of the discussions reported in the IG report, Rice was the White House National Security Advisor and Bellinger was legal advisor to the NSC.

The IG report comes on the heels of an April 9, 2008 ABC News report that Rice had a central role in the approval of the use of torture on specific detainees as chair of the NSC Principals meetings. ABC News reported that Rice chaired the Principals Committee that “included Vice President Cheney, Rice, Defense Secretary Donald Rumsfeld and Secretary of State Colin Powell, as well as CIA Director George Tenet and Attorney General John Ashcroft.” The committee “discussed and approved specific details of how high-value al Qaeda suspects would be interrogated by the Central Intelligence Agency,” including “whether they would be slapped, pushed, deprived of sleep or subjected to simulated drowning, called waterboarding.” These discussions reportedly “were so detailed [that] some of the interrogation sessions were almost choreographed – down to the number of times CIA agents could use a specific tactic.” ABC reported that “at each discussion, all the Principals present approved.” In fact, ABC reported that, even after the torture at Abu Ghraib was exposed to the public, the Principals Committee continued to approve the use of so-called “enhanced interrogation techniques,” with Rice reportedly telling the CIA: “This is your baby. Go do it.”

The ACLU urges you and Subcommittee members to ask IG Fine to explain in more detail his findings on the role of the NSC and its committees in the authorization of interrogations and torture. Based on his written report, the IG has already stated that top officials from the Criminal Division of the Justice Department, and in at least one instance then-Attorney General Ashcroft, expressed concern with interrogation practices. The Subcommittee should determine whether the IG’s findings match up with the ABC News report. This hearing should be the first step by the Subcommittee to determine the role of Rice and Bellinger in the torture issue.

IG on the Role of the NSC Under Rice and Bellinger

The IG reports that, under Rice, the NSC coordinated inter-agency decisions on detainees, that Bellinger chaired its day-to-day committee, while Rice chaired the Principals Committee. Pages 16-17 of the IG report state that

many inter agency discussions on a variety of overseas detainee matters, such as developing processes for sorting detainees and later for the repatriation or release of detainees, took place in a Policy Coordinating Committee. The Policy Coordinating Committee for detainee issues was led by a National Security Council (NSC) staff member, and was composed of representatives from DOJ, the Department of State (DOS) (including members of the DOS Office of the Legal Advisor), the DOD (General

Counsel's Office and sometimes others from the Joint Chiefs), and Central Intelligence Agency (CIA). . . .By late 2001 or early 2002, there were regular (sometimes weekly) PCC video conferences or meetings on detainee issues that were chaired by the NSC legal advisor [Bellinger]. Issues that could not be resolved at the PCC could be "bumped up" to the "Deputies" meeting If a resolution still could not be reached, an issue could be raised to the "Principals" meeting, which included the Attorney General or his designee.

The IG places the locus of decision-making on critical detainee issues at the NSC during Rice's tenure, and describes "sometimes weekly" meetings chaired by Bellinger on detainee issues. **The Subcommittee should determine whether the use of torture, particularly as applied to specific detainees, was approved at any of these NSC meetings.**

IG on Ashcroft-Rice Discussion of DOJ Concerns re: Interrogations

In the first reference ever in a government report to Rice specifically having a role in the torture issue, page 115 of the IG reports explains that DOJ concerns about the interrogation of Al-Qahtani were discussed at the highest levels of government, as it reports that

[Counsel to the head of the DOJ Criminal Division] Nahmias said that he did not know "in detail" what former Attorney General Ashcroft did with the concerns brought to him about the Al-Qahtani interrogations, but said he was 'fairly confident that the military's handling of Al-Qahtani' was raised by DOJ officials at the Principals or Deputies committee meetings about GTMO. Nahmias also told the OIG that Attorney General Ashcroft spoke with someone at the NSC, most likely National Security Advisor Condoleezza Rice, about DOJ's concerns about the approach the DOD was taking in the Al-Qahtani interrogations.

The Subcommittee should ask the IG whether he tried to interview Rice, whether he knows of any other reports of Rice discussing interrogations or torture or abuse, and whether he could explain his understanding of Rice's role in approving the use of specific interrogation tactics for specific detainees. These may be critical questions in determining how and why the use of torture was authorized or approved.

IG on DOJ Officials' Reports to Bellinger and/or His NSC Committee

Without identifying him by name, but instead using his then-title of "legal advisor to the National Security Council," pages 115-117 of the

IG report explain very detailed discussions of interrogations, torture, and DOJ and FBI concerns with Bellinger and the NSC committee that he chaired. For example, pages 115-116 of the IG report states that

[Three officials from the DOJ Criminal Division called Bellinger to express] the concern that the DOD's interrogation methods were making GTMO detainees unusable in U.S. cases. She said that during the call they discussed the difference between the FBI approach (rapport building) and the confrontational DOD approach (SERE method). . . . [T]hey told the legal advisor [Bellinger] that DOD interrogators were doing a terrible job and were doing things that the FBI agents would never do.

Similarly, on page 116, DOJ Criminal Division official David Nahmias reportedly said “that in the latter part of 2003 he told the NSC legal advisor about techniques the MLDU Unit Chief had brought to his attention over time, such as female personnel exposing their breasts and use of ‘pig oil’ on detainees.” Moreover, also on page 116, the IG report states

[DOJ Criminal Division official] Swartz also told us that he recalled discussing interrogation issues in meetings at the NSC-chaired PCC meetings regarding the return of GTMO detainees. He said that he raised the ineffective and wrongheaded practice of the military interrogations at GTMO as a continuing theme of these PCC meetings. Swartz said that from GTMO's inception he took the position within DOJ and in inter-agency meetings that GTMO was doing grave damage to the United States' position internationally and in particular with regard to law enforcement and the rule of law.

The Subcommittee should question the IG on the role of Bellinger in discussions or approval of interrogations or the use of torture or abuse, whether he knows if Bellinger provided legal advice to the NSC or its committees on any interrogations, and whether and when he ever stopped any interrogations that included torture or abuse. The Subcommittee should also determine whether Bellinger was interviewed by the IG and whether the IG ever requested to interview Bellinger.

IG on Discussions of Legality of Torture Tactics at NSC Meeting

The IG reported that the NSC meetings, during the period when Rice and Bellinger were at NSC, included discussions of the legality of CIA interrogation techniques. Specifically, page 73 of the IG report states that

[FBI] Director Mueller's former Chief of Staff, Daniel Levin, told the OIG that in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council (NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques.

The Subcommittee should ask IG Fine to explain his understanding of how and when legal opinions were requested from the Justice Department and whether Bellinger or any other attorneys provided legal advice on the legality of interrogation practices during any of the meetings of the NSC or its committees.

IG on the Breadth of NSC Determinations on Torture and Interrogations

Based on the IG report, the discussions at NSC meetings on interrogations and torture appear to have been very specific and also wide ranging. For example, pages 94-95 of the IG report quote the “agenda for a January 8, 2003 NSC meeting,” which it excerpts as

Interrogations of Al Qatani in Mghanistan and at GTMO have produced little information. Since September, his interrogations have been conducted by [Defense Intelligence Agency]. Since late September, FBI, DOJ, XXXX, and some elements of DOD have been proposing XXXX Very recent and unevaluated reports suggest that he may now be providing intelligence; if so, XXXX may not be appropriate.

(with XXXX indicating redactions by the IG). Similarly, page 114 of the IG report states that

David Ayres, the former Chief of Staff to Attorney General Ashcroft, . . . told us that the dispute between DOJ and FBI on one side and elements of the military on the other was the subject of "ongoing, longstanding, trench warfare in the inter agency discussions" between the FBI and the military, including at the Principals Committee, the Deputies Committee, and the line-level.

Moreover, in what appears to be a reference to a discussion at an NSC meeting, page 127 of the IG report states that former Deputy Attorney General Larry Thompson recalled a discussion of whether a detainee


could be made to believe that we was going to be buried alive, as it states

the only thing he remembers along those lines [of discussions of torture] was a proposal to give a detainee the illusion that he was going to be buried alive, but he said a decision was made that DOJ would not permit that.

Clearly, the Subcommittee should ask the IG whether he knows of other specific interrogation techniques discussed, approved, or declined at NSC meetings, and to identify specific persons at the NSC or the State Department who would have personal knowledge of these NSC proceedings.

The ACLU greatly appreciates the work of you, the Subcommittee, and your staff in your hearings on torture and rendition. Please do not hesitate to call us at 202-675-2308 if we can be helpful to you as you continue your oversight over this critically important issue.

Sincerely,



Caroline Fredrickson
Director



Christopher E. Anders
Legislative Counsel