

By John Cella

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On November 8, former Central Intelligence Agency Acting General Counsel John A. Rizzo visited Harvard Law School at an event sponsored by the Harvard National Security Law Association. Currently a Visiting Fellow at the Hoover Institution, Rizzo is now working on a memoir detailing his 34 years of service at the CIA. Except for a period in 2002-2003 when Scott Muller was appointed, Rizzo served as the CIA Acting General Counsel from late 2001 through 2009.

Rizzo spoke about his start at the Agency in 1976, when he was one of only 18 lawyers. Rizzo noted that today, about 130 lawyers penetrate almost every aspect of the Agency's work. Early in his career, Rizzo drafted the internal regulations governing the CIA's relationships with the media, clergy, academia, and domestic businesses, regulations which are still in place. Later, Rizzo served as the Deputy Director of the Office of Congressional Affairs from 1986 to 1989, where he was the lead counsel dealing with the House and Senate Committees investigating the Iran-Contra affair.

During his time as the Acting General Counsel after 9/11, he requested the famous "Torture Memo" from the Office of Legal Counsel (OLC) at the Department of Justice, in which OLC Head Jay Bybee expressed the opinion that waterboarding and other enhanced interrogation techniques ("EITs") were not prohibited under U.S. law. Rizzo noted that he had no face-to-face interaction with Jay Bybee on this issue leading up the memo, although Bybee ultimately attached his signature to the opinion. Rizzo said that most of his dealings at the time were with John Yoo, who is believed to have drafted the memo.

Rizzo conceded the possibility that the CIA's decision to proceed with waterboarding when the OLC memo declared it legal was a mistake given the later public relations fallout. Still, he said it was an open question whether the information obtained through waterboarding could have been obtained with less intrusive methods of interrogation. Personally, he acknowledged that he finds waterboarding to be a "brutal" method even if it is not legally torture. Although he expressed confidence in Assistant United States Attorney John Durham, the prosecutor leading the investigation of whether CIA personnel exceeded their legal mandate from OLC in the

interrogation of suspected terrorists, Rizzo noted his disappointment with how long Durham's investigation has gone. Rizzo also said that he was very upset about the destruction of the videotapes made of the waterboarding, which he said were destroyed without his knowledge and against his wishes. *UPDATE: The Department of Justice informed members of the press on November 9 that* [John Durham will not seek any charges related to the destruction of the CIA videotapes](#)

Rizzo also spoke about his concern that the increased partisanship in Washington since 9/11 has been harmful to the CIA's mission and that the Agency's policies should not be just another political football. He observed that throughout its history, the CIA's aggressiveness has swung like a pendulum, with many criticizing the CIA for being too passive before 9/11 and then overly-intrusive after reports of EITs and rendition programs surfaced. [He noted the irony that the negative public reaction to CIA practices seemed not to extend from the use of waterboarding to the Agency's predatory drone strike operations](#), which have resulted in the killings of many terrorists.

Aside from interrogation practices, Rizzo stated that given the accepted illegality of espionage, international law was generally not a major legal consideration in the CIA General Counsel's office. International law is included, he noted, in the Agency's operational risk calculus for covert operations. Rizzo observed that the end of the Cold War greatly complicated the international landscape with regard to the Agency's espionage activities, given that without the US-USSR gentlemen's understanding, [foreign prosecutors and magistrates like those in Italy can now investigate U.S. covert operations officers](#), potentially even without the backing of their own governments.