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Re: D.C. Circuit Nominee Caitlin Halligan's Testimony on Report on Indefinite Detention

By Ed Whelan

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A follow-up to my [commentary](#) on D.C. Circuit nominee Caitlin Halligan's [testimony](#) that it wasn't until the summer of 2010 that she "first became aware of the existence" of the 2004 [report](#) on indefinite detention, which includes her name among the bar committee members responsible for the report:

Halligan has submitted to the Senate Judiciary Committee various minutes of meetings of the Committee on Federal Courts of the Association of the Bar of the City of New York—the committee that issued the report on indefinite detention—along with her own letter discussing those minutes. (The minutes are available at pages 33-64 of this [collection](#) of Halligan's responses to post-hearing questions, and her letter is at pages 30-32.) Those minutes support this account:

1. Halligan apparently joined the Committee on Federal Courts in September 2003. A year earlier, the committee had first started exploring a possible project "on issues arising from the legal aftermath of the events of September 11."
2. As of October 8, 2003, the committee chairman, informing committee members of the subcommittee's progress, stated that the report was "near completion." (Halligan was not present at this meeting.)
3. At the very first committee meeting Halligan attended, in November 2003, the committee "considered the draft report circulated by Mr. Moreland [the committee chairman] on 'enemy combatant' detentions and offered several suggestions for revising the draft report." This was one of only four items on the agenda for that meeting.
4. At the December 2003 meeting, which Halligan attended, Moreland notified the committee of a revision that would be made to the draft report.
5. At the January 14, 2004, meeting, which Halligan did not attend, Moreland notified the

committee that the report “was almost complete and that he [would] circulate shortly a proposed final draft to the Committee.”

6. The report was issued on February 6, 2004—before the committee’s next meeting.

Some observations:

1. It seems reasonably clear from this account that Halligan received a draft of the report in advance of, or at, the November 2003 meeting and that she was present while the committee discussed “several suggestions for revising the draft report.”

2. It seems reasonably clear that Moreland circulated a proposed final draft of the report to committee members after the January 14, 2004, meeting and before its publication. In addition to the fact that Moreland said he would do so, there are four members of the committee shown on the report as having “Abstained from consideration of this report.” Under the opt-out procedure that Halligan describes in her letter, these four members presumably made the decision to abstain after receiving the proposed final draft.

3. In her letter, Halligan concedes that “it is quite possible that [a draft of the report] was sent to me” prior to its issuance, but states that she has “no record or recollection of receiving or reading” such a draft. I won’t fault Halligan for what I will assume to be her failings of memory.

4. Did Halligan agree in 2004 with the controversial positions on indefinite detention (and related issues) that she now races to distance herself from? Or did she allow her name to go on a massive report the contents of which she hadn’t even familiarized herself with? Or was she so negligent of her committee responsibility that she didn’t even realize that her name would go on the report? These would seem to be the three available options. Exploration of the e-mail trail would be the appropriate next step to establish which in fact occurred. But none of the options speaks well of Halligan’s fitness for a D.C. Circuit seat.

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