

WHY WERE THE TORTURE TAPES DESTROYED?

Bob Baer has a column out stating that he can't figure out why the torture tapes were destroyed—and repeating CIA spin claiming the torture depicted in the tapes should not, itself, be a legal problem, since it was approved by DOJ. (h/t cs)

Did the CIA want to destroy graphic evidence of sleep-deprivation or waterboarding? They were interrogation methods approved by the Department of Justice in memos sent to the CIA, and therefore shouldn't have been deemed a legal problem. The closest thing we come to answer is an internal CIA e-mail released last Thursday, in which an unidentified CIA officer writes that Rodriguez decided to destroy the tapes because they made the CIA "look horrible; it would be devastating to us."

[snip]

I haven't been able to clear up the mystery either, beyond the fact that a former CIA officer aware of the details of the 2002 interrogation of the two al-Qaeda suspects told me that the tapes' images were "horrific." He believes that although the interrogations fell within the guidelines provided by the Department of Justice, if the public ever saw them, it would conclude that "enhanced interrogation" is just another name for torture.

Those of you who have been following along already know this, but I thought I ought to sum up what we do know—but what Baer's CIA sources aren't telling him.

First, Baer's source who "believes ... the interrogations fell within the guidelines provided by the Department of Justice" is wrong—at least so long as we're talking DOJ's **written** guidelines. As CIA's Inspector General made clear, the waterboarding that was depicted on the tapes in 2003 did not fall within the limits of the Bybee Two memo, both because the torturers used far more water, forced it down Abu Zubaydah's throat, and used it with far more repetition than allowed by the memo. Furthermore, the torturers exceeded even the guidelines the Counterterrorism Center set on sleep deprivation—though Yoo may (or may not have) have set the limit in the Bybee Two memo high enough to cover what had already been done to Abu Zubaydah. Folks in the IG's office had about seven more pages of concerns about what was depicted on the torture tapes (PDF 86-93)—but that all remains redacted.

So the tapes did not, in fact, match the written guidelines DOJ gave them. The torturers claim to have kept John Yoo and others up-to-date on their variances, but John Yoo's statements thus far challenge that claim.

And in any case, that only describes the evidence on the torture tapes as they existed in 2003 when the IG reviewed them and presumably in 2005 when CIA destroyed them.

The other, potentially bigger problem for those depicted in the torture tapes has to do with what once appeared on the 15 tapes that the torturers altered before November 30, 2002, when CIA lawyer John McPherson reviewed them. Before that point, the torturers had altered 21 hours of the torture tapes, which covered at least two of the harshest torture sessions. Had someone done forensics on the tapes before they were destroyed, we might have learned what happened during those 21 hours. But by destroying the tapes completely, the CIA prevented that from happening.

I'm guessing—though it's only a guess—that was the point.

None of that helps to explain Baer's other questions, such as whether Jose Rodriguez get approval from anyone senior to him before he ordered the tapes destroyed (though we do have further evidence that David Addington and Alberto Gonzales both opposed destroying the tapes)?

I am, however, interested in the question he ends his piece with: why was CIA—and not DOD—tasked with these interrogations?

But what's really too bad is that Durham hasn't been tasked with explaining the broader mystery of why, in the first place, the CIA is even interrogating prisoners of war. The 1947 National Security Act established the CIA as a civilian spy agency, not as some Pentagon backroom where you get to do things you don't want the American people to find out about. But more to the point, the military is much better equipped to interrogate prisoners. It has its own interrogation school at Fort Huachuca, not to mention hundreds of language-qualified and experienced interrogators. It also has the Uniform Code of Military Justice to deal with interrogations that have gone bad. (Some almost inevitably do.) Unlike the CIA, military interrogators have immediate access to legal counsel. It's not an accident that military misdeeds such as those at Abu Ghraib go right to trial, while CIA investigations drag on for years – and drag down morale.

Because that may well have been the point, you know? And it may well have been why the torture tapes were destroyed.

The torturers appear to have been more interested in testing the limits of Abu Zubaydah's human endurance than they were in getting usable intelligence from him. And one of the things those tapes may well have shown was

up to 21 hours of human experimentation—potentially pushing techniques like waterboarding and sleep deprivation beyond all limits, potentially using techniques like mock burial the torturers asked for but didn't get approved, and potentially using other techniques entirely.