

THE DUBIOUS TIMELINE FROM PINCUS' LOVE LETTER TO BOB BENNETT

I've already ranted about how irresponsible it was for Walter Pincus and Joby Warrick to publish Bob Bennett's statement on behalf of Jose Rodriguez—a statement that Rodriguez refused to give under oath without immunity—on the same day that John Rizzo testifies before Congress. Nothing like assisting the obstruction of an ongoing investigation. But now that I've done my ranting (and enjoyed the sun), here is another rant about the dubious timeline offered in Pincus and Warrick's article.

The article alternates between vague and specific in curious fashion. For example, the article specifies that the taping started in August and ended in December 2002.

According to interviews with more than two dozen current and former U.S. officials familiar with the debate, the taping was conducted from **August to December 2002** to demonstrate that interrogators were following the detailed rules set by lawyers and medical experts in Washington, and were not causing a detainee's death.

That detail directly contradicts the date offered in the CIA's previous attempt to straighten out its story on the terror tapes, which claimed the taping started in spring 2002.

If Abu Zubaydah, a senior operative of Al Qaeda, died in American hands, Central Intelligence Agency officers pursuing the terrorist group knew that much of the world would believe they had killed him.

So in the **spring of 2002**, ... they set up video cameras to record his every moment: asleep in his cell, having his bandages changed, being interrogated.

Now, there are two big reasons why the CIA might want to change that date. First, the CIA wasn't authorized to torture until August 2002—so the later date magically makes any torture that happened legal, at least according to OLC. In addition, we know that Abu Zubaydah identified Padilla in the first several weeks of his captivity. By claiming no tapes were taken before August, the CIA pretends that any claim from Padilla regarding the tapes is irrelevant, since (if they really weren't taken until August), the tapes would have no evidence relevant to Padilla's case.

But here's the problem with the new dates, beyond just the contradiction with the CIA's earlier story: the CIA still wants you to believe they took the tapes to prove they weren't killing Abu Zubaydah. But by August, he had already been under medical treatment for four months, presumably well beyond the time they needed to prove they weren't killing Zubaydah.

And the changing date is all the more suspicious since Zubaydah's health remains one of the chief reasons the WaPo's sources give for stopping the taping.

By December 2002, the taping was no longer needed, according to three former intelligence officials. "Zubaida's health was better, and he was providing information that we could check out," one said.

If the tapes were precipitated on Zubaydah's health, then why didn't they start until August, according to this latest iteration of the CIA story?

Interestingly, the article suggests another

possible reason why the taping ended in December 2002: the departure of Cofer Black from the CIA.

... after the Sept. 11, 2001, terrorist attacks, [Jose Rodriguez] was promoted to deputy director of the fast-expanding counterterrorism center. He served under the center's director then, J. Cofer Black, who had been his subordinate in the Latin America division.

When Black – who played a key role in setting up the secret prisons and instituting the interrogation policy – left the CIA in December 2002, Rodriguez took his place. Colleagues recall that even in the deputy's slot, Rodriguez was aware of the videotaping of Zubaida, and that he later told several it was necessary so that experts, such as psychologists not present during interrogations, could view Zubaida's physical reactions to questions.

Note that the taping started when Black was director of CTC, but ended when Rodriguez—the same guy who would eventually order their destruction—took over as director. And, at least according to Bennett's statement for Rodriguez (which of course Rodriguez refused to give under oath), "the CIA" wanted to destroy the tapes as early as 2002, conveniently less than a month before the CIA IG investigation began.

But Rodriguez' attorney said he acted in the belief that he was carrying out the agency's stated intention for nearly three years. "Since 2002, the CIA wanted to destroy the tapes to protect the identity and lives of its officers and for other counterintelligence reasons," Bennett said in a written response to questions from The Washington Post.

Though I'm not sure I buy it, particularly given the squirrely way they refer to the CIA IG

investigation, which we know started before the CIA informed Congress that they were going to destroy the tapes.

An internal probe of the interrogations by the CIA's inspector general began in early 2003 **for reasons that have not been disclosed**. In February of that year, then-CIA General Counsel Scott W. Muller told lawmakers that the agency planned to destroy the tapes after the completion of the investigation. That year, all waterboarding was halted; and at an undisclosed time, several of the inspector general's deputies traveled to Bangkok to view the tapes, officials said. [my emphasis]

Pincus, don't you think you could have pushed Bennett to ask Rodriguez why that IG investigation got started if you were going to do him the favor of helping to obstruct the investigation into the torture tape destruction? At least according to the IG, their investigation began in January, perhaps just weeks or even days after the claimed "December" intention to destroy the torture tapes. And not like it matters, but OIG says they saw the torture tapes in May.

The vagueness surrounding dates regarding the OIG investigation that are already (albeit just recently) in the public domain suggests that Pincus and Warrick didn't talk to anyone in IG—presumably part of the anti-torture CIA faction—for their story. Which might be why this story makes absolutely no mention that the report concluded that the interrogations might be illegal.

Note to journalists covering this story: the one thing that can discredit you almost as much as printing up a witness's statement that he refuses to give under oath in perfect timing to align testimony with another witness, it's to ignore the CIA IG report and its conclusion that seems to be at the center of the decision to

destroy the tapes. Just as an example, when you discuss the events surrounding the May 2004 discussion over whether to destroy the tapes or not, you might mention that the CIA IG had just concluded that the interrogation program might violate the law.

In May 2004, CIA operatives became concerned when a Washington Post article disclosed that the CIA had conducted its interrogations under a new, looser Bush administration definition of what legally constituted torture, several former CIA officials said. The disclosure sparked an internal Justice Department review of that definition and led to a suspension of the CIA's harsh interrogation program.

The tapes were discussed with White House lawyers twice, according to a senior U.S. official. The first occasion was a meeting convened by Muller and senior lawyers of the White House and the Justice Department specifically to discuss their fate. The other discussion was described by one participant as "fleeting," when the existence of the tapes came up during a spring 2004 meeting to discuss the Abu Ghraib prison abuse scandal, the official said.

And while I'm not certain, I think that that May 2004 is actually the June 8, 2004 WaPo article revealing the contents of the Bybee memo—which wouldn't have factored into the reported May briefing at the White House, but which would have alerted the CIA that people—probably within the CIA—were leaking the justifications for torture, presumably in an attempt to get the CIA out of the torture business.

Also, that claim that the White House was involved in discussions about destroying the tapes just twice? That's impossible, given other details in the story. Given the description above, the discussions with the White House

would have included the May 2004 briefing, and another one that happened before Scott Muller left in July 2004 (it was probably in February 2003, since I doubt CIA would tell Congress it was destroying tapes without first alerting the White House). But if that's true, and those were the only two briefings the White House participated in, then this statement cannot also be true.

Those known to have counseled against the tapes' destruction include John B. Bellinger III, while serving as the National Security Council's top legal adviser; **Harriet E. Miers, while serving as the top White House counsel**; George J. Tenet, while serving as CIA director; Muller, while serving as the CIA's general counsel; and John D. Negroponte, while serving as director of national intelligence. [my emphasis]

Harriet did not become White House Counsel until late 2004, after Muller had already left the CIA. So if she participated in discussions about the torture tapes as White House Counsel, then there was at least one more discussion involving the White House before the tapes were destroyed.

One final detail about the timeline presented in the WaPo story. Note how vague it is regarding precisely when the Thai station chief asked to destroy the videotapes.

In late 2005, the retiring CIA station chief in Bangkok sent a classified cable to his superiors in Langley asking if he could destroy videotapes recorded at a secret CIA prison in Thailand that in part portrayed intelligence officers using simulated drowning to extract information from suspected al-Qaeda members.

I find that particularly curious, since the next precipitating factor for the destruction of the

tapes is the appointment of Porter Goss and the assumption, by John Rizzo, of the acting Counsel role, both events that happened in 2004.

The CIA had a new director and an acting general counsel, neither of whom sought to block the destruction of the tapes, according to agency officials. The station chief was insistent because he was retiring and wanted to resolve the matter before he left, the officials said. And in November 2005, a published report that detailed a secret CIA prison system provoked an international outcry.

Now, I suspect these details come from Jose Rodriguez (have I mentioned that he wouldn't testify to these details under oath?) so who knows how reliable they are. The detail about Goss and Rizzo might be an attempt to throw blame their way, as this statement from appears to do as well.

"In 2003 the leadership of intelligence committees were told about the CIA's intent to destroy the tapes. In 2005, CIA lawyers again advised the National Clandestine Service that they had the authority to destroy the tapes and it was legal to do so. It is unfortunate," Bennett continued, "that under the pressure of a Congressional and criminal investigation, history is now being revised, and some people are running for cover."

And the three factors Bennett lists for Rodriguez' decision to finally order the tapes be destroyed obscure the congressional debate on torture, the multiple court orders and 9/11 Commission inquiries regarding torture tapes, and the ongoing leaks from the CIA anti-torture faction. All of which suggests the timeline—the entire timeline, with all its contradictions and vagueness—is suspect.