

# IS THIS WHY ROSENBERG RECUSED?

The AP [reveals](#) that prosecutors in the Alexandria US Attorney's Office—including the lead prosecutor in the Moussaoui case—did know of the torture tapes in early 2006, before Moussaoui was sentenced.

The lead prosecutor in the terror case against Zacarias Moussaoui may have known the CIA destroyed tapes of its interrogations of an al-Qaida suspect more than a year before the government acknowledged it to the court, newly unsealed documents indicate.

The documents, which were declassified and released Wednesday by the 4th U.S. Circuit Court of Appeals, detail efforts by Moussaoui's attorneys to send the case back to a lower federal court to find out whether the tapes should have been disclosed and whether they would have influenced his decision to plead guilty.

In a Dec. 18, 2007, letter to the appeals court's chief judge, the Justice Department acknowledged that its lead prosecutor in the case had been informed about the CIA's tapes of al-Qaida lieutenant Abu Zubaydah being interrogated.

The letter said the prosecutor, Robert A. Spencer, may have been told of the tapes' destruction in late February or early March of 2006, just as the U.S. District Court in Alexandria, Va., was beginning its trial on whether Moussaoui would be eligible to face the death penalty.

Spencer, who was one of three prosecutors on the government's team, "does not recall being told this

information," U.S. Attorney Chuck Rosenberg wrote in the Dec. 18 letter to 4th U.S. Circuit Chief Judge Karen J. Williams.

Another prosecutor in Rosenberg's office in Virginia's eastern district who was not involved in the case "recalls telling (Spencer) on one occasion," the letter said.

That second, unnamed, prosecutor learned about the videotapes of Zubaydah "in connection with work he performed in a Department of Justice project unrelated to the Moussaoui case," the letter said.

It is unclear what that project was. [my emphasis]

Mind you, Spencer was informed about the tapes in early 2006, several months after he represented to Leonie Brinkema that there were no tapes of interrogations. But he would have you believe that he was told this fact just before the hearings on Moussoui's sentencing, but forgot (I almost feel as if I should add, "as if it were new," from Libby's dubious claims). When exactly does he suggest he forgot this information that would have been immediately pertinent to the Moussoui case? Immediately? Just before he started 'fessing up that there were other interrogation tapes they hadn't disclosed? And we're to believe it never came up again during this period?

And what was this "special project" by which the other prosecutor learned of the tapes? Was it, perhaps, a response to the CIA IG report?

Spencer's convenient forgetfulness and the involvement of his prosecutors in this "special project" may well be the reasons Chuck Rosenberg, the USA for ED VA, recused himself from this case. But it sure raises questions why the investigation is still being conducted out of that office.

Mukasey has an oversight hearing before the House Judiciary today. I imagine we'll be hearing a lot more about this there.

Update: Via [How Appealing](#), here are the documents:

[Moussaoui motion, limited remand](#)

[US opposition to motion](#)

[Supplemental US letter](#)

[Moussaoui response](#)