

# DID MITCHELL AND JESSEN HAVE THE THREE OTHER TORTURE TAPES? OR THE EGYPTIANS?

Update: Aeon makes an important point: the tapes may have been in foreign custody.

I thought it might be useful to go back and see what DOJ said to Brinkema about the ones that didn't get destroyed.

The position of the CIA is that only AZ and al-Nashiri were videotaped. (grain of salt time – It is also their position that they recorded over all tapes every two days – thus explaining why only 92 tapes were destroyed.)

A Feb 2008 Mazzetti article about the subject of your post here adds some detail:

But federal prosecutors told a judge in October that the C.I.A. possessed two videotapes and one audiotape documenting the interrogations of detainees suspected of having been Qaeda operatives. In recent weeks, some government officials have indicated that the C.I.A. may have obtained those tapes or others from foreign intelligence services.

So another detainee could very well have been shown on these three tapes especially if obtained from a liaison service. But also the interrogation in question may have been then conducted by the same foreign intel service.

Moussaoui also asked for material from Ibn Sheikh al-Libi. Who, of course, was in Egyptian custody. That might explain why the transcripts were suspect, and it might explain why one part of CIA had contact with the people who had the tapes. Thanks Aeon!

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Since we're back on torture tapes, I wanted to return to the letter DOJ sent to Leonie Brinkema to tell her they had found three torture tapes they had neglected to mention when she asked about tapes in November 2005. There's much that remains obscure about this letter, but the whole thing makes a lot more sense if Mitchell and Jessen had been in possession of the three "discovered" tapes.

DOJ writes:

Recently, we learned that the CIA obtained three recordings (two video tapes and one short audio tape) of interviews of [four lines redacted]. We are unaware of recordings involving the other enemy combatant witnesses at issue in this case [half line redacted, must be the names of those Moussaoui asked to testify]. Further, the CIA came into possession of the three recordings under unique circumstances involving separate national security matters unrelated to the Moussaoui prosecution.

On September 13, 2007, an attorney for the CIA notified us of the discovery of a video tape of the interrogation of [one and a half lines redacted]. On September 19, 2007, we viewed the video tape and a transcript [redacted] of the interview. The transcript contains no mention of Moussaoui or any details of the September 11 plot. In other words, the contents of the interrogation have no bearing on the Moussaoui prosecution [footnote to a comment, "the recording from (redacted)"]. The existence of the

video tape is at odds with statements in two CIA declarations submitted in this case, as discussed in detail below.

After learning of the existence of the first video tape, we requested the CIA to perform an exhaustive review to determine whether it was in a possession of any other such recordings for any of the enemy combatant witnesses at issue in this case. CIA's review, which now appears to be complete, uncovered the existence of a second video tape, as well as a short audio tape, both of which pertained to interrogations [redacted]. On October 18, 2007, we viewed the second video tape and listened to the audio tape, while reviewing transcripts [redacted, with unredacted footnote saying, "The transcript of the audio tape previously existed and was contained within an intelligence cable."] Like the first video tape, the contents of the second video tape and the audio tape have no bearing on the Moussaoui prosecution—they neither mention Moussaoui nor discuss the September 11 plot. We attach for the Courts' review ex parte a copy of the transcripts for the three recordings. [Footnote saying, "Although we have provided defense counsel with a copy of this letter, we have not provided them with a copy of the transcripts for two reasons. First, the interviews address other national security matters for which defense counsel lack a need to know. (Three and a half lines redacted.)"]

At our request, CIA also provided us with intelligence cables pertaining to the interviews recorded on the two video tapes. Because we reviewed these cables during our discovery review, we wanted to ensure that the cables accurately captured the substance of the

interrogations. Based on our comparison of the cables to the [redacted] videotapes, and keeping in mind that the cables were prepared for the purposes of disseminating intelligence, we found that the intelligence cables accurately summarized the substance of the interrogations in question.

[two paragraphs on how this conflicts with declarations they made in the Moussaoui case]

Unbeknownst to the authors of the declarations, the CIA possessed the three recordings at the time that the Declarations were submitted. We asked the CIA to ascertain the reason for such an error. [one and a half lines redacted] As best as can be determined, it appears that the authors of the Declarations relied on assurances of the component of the CIA that [one line redacted] unknowing that a different component of the CIA had contact with [one line redacted].

First, it appears most likely that the first tape "discovered" here was from Ramzi bin al-Shibh; Moussaoui had asked for bin al-Shibh, Mustafa al-Hawsawi, and Khalid Sheikh Mohammed by the time of DOJ's May 9, 2003 Declaration to the the Appeals Court, but only the request for testimony from bin al-Shibh had made it to the Appeals Court. From Moussaoui's docket on April 18, 2003:

Emergency Strike to Force the Compulsive Liar Ashcroft to Hand Over Exculpatory Statement from Brothers Ramzi, Mustafa and Mastermind 9/11 Mohammed So They Will Be Assess by Leonie Brinkema and the Court of Appeal in the Issue Relating to Access to Ramzi for Zacarias Moussaoui Circus Trial

Bin al-Shibh is also most likely given that CIA purportedly stopped taping interrogations in December 2002; bin al-Shibh was captured on September 11, 2002, while KSM and Hawsawi were captured on March 1, 2003.

Note how they claim the videotape does not pertain to Moussaoui: it does not mention him, it does not give details of 9/11. Even setting aside the fact that—by the time the Appeals Court heard this request in 2003—the government had changed its theory of Moussaoui's role (possibly as a direct result of KSM's interrogations), so the 9/11 attack, itself, is not the issue, it appears that bin al-Shibh (if that's who this is) did discuss 9/11; just not in detail.

Now look at how they describe the second videotape and the audiotape: "a second video tape, as well as a short audio tape, both of which pertained to interrogations [redacted]." Not—as they referred to the first videotape—"a video tape of the interrogation," but tapes "pertaining" to the interrogations. This suggests they tapes may have been a secondary use of primary video, the kind of thing you might find in a (say) training tape.

Now look at how the letter describes when and whether CIA possessed these tapes. The last paragraph I quoted here reveals that "the CIA possessed the three recordings at the time that the Declarations were submitted." But the first paragraph explains that "the CIA obtained three recordings ... CIA came into possession of the three recordings" and the third paragraph suggests the CIA "uncovered the existence of" the second and third tape. While the "uncovered the existence of" is ambiguous (probably deliberately so), the first reference, "CIA obtained ... came into possession of," suggests the CIA just got these tapes in 2007. That is, it appears (though I admit this is not certain) that the CIA had the tapes in 2003 and 2005, when the declarations were made, but newly obtained them in 2007, before CIA told DOJ about

them. If I'm right about this, it says CIA had the tapes, got rid of them, then got new copies from ... someone who didn't destroy the earlier copies.

But then the letter reveals—as a way of explaining why the tapes weren't discovered in 2003 and 2005—that they hadn't found the tapes when they asked the component of the CIA that most logically would have such things (probably Counterterrorism Center), but later learned that a different component of the CIA "had contact with" (presumably) the entity that had the tapes. Is it possible that the second component of CIA got training from a certain torture contractor and in the process got two videos from real live torture sessions? Just a wildarsed guess.

Now consider DOJ's discussion of whether or not their earlier representations of this material was fair. First off, there's a redaction associated with the discussion of transcripts twice: "we viewed the video tape and a transcript [redacted] of the interview," "while reviewing transcripts [redacted, with the footnote about the citation of it in an intelligence cable]." One possible replacement for this redaction is the name of the entity that made the transcripts.

And DOJ felt the need to double check the content of these transcripts. They got the intelligence cables they had previously reviewed on this material, and compared the content in those cables to the videotapes (and note, there's a redaction before videotape that parallels the redactions before transcripts, as if describing the entity that made or owned the videotapes). DOJ gives a hedged verdict on whether or not the cables were a fair representation of what was portrayed in the videotapes.

...keeping in mind that the cables were prepared for the purposes of disseminating intelligence, we found that the intelligence cables accurately

summarized the substance of the interrogations in question.

That is, the cables were peachy keen if all you wanted to do was disseminate what the detainees said during the interrogation, but if you wanted to do something else (such as assess whether the testimony of these detainees was coerced or not, just as one possible example), the transcripts and cables might not be considered complete. Note two more details on this point: footnote 5 describes two reasons Moussaoui's lawyers don't get transcripts of these interviews. The first is that the attorneys don't have a need to know (so it remains classified to them). And the second is ... redacted. Keep in mind, too, that CIA did not give Brinkema the tapes, just the transcripts. So as far as we know, she's expected to trust the DOJ's assertions that the intelligence cables are accurate, even while DOJ doesn't explain why they modify their determination that the cables "accurately summarized the substance of the interrogations" by appealing to the intelligence (note—not law enforcement) function of the cables.

Finally, there's the matter of the national security issue that led the CIA to rediscover these tapes:

CIA came into possession of the three recordings under unique circumstances involving separate national security matters unrelated to the Moussaoui prosecution.

[snip]

First, the interviews address other national security matters for which defense counsel lack a need to know.

The second reference to national security matters might really be no more than a question about need to know—the classification of sources and methods (of torture). But the first one seems recent, particularly with its description

of "unique." While most people have assumed the timing of this release pertains to Jose Rodriguez' retirement in July 2007, we also know that DOD issued a preservation order pertaining to James Mitchell and Bruce Jessen in May 2007. (Of course, given that Rodriguez was in charge of CTC during the period of the worst torture (2002-2004), during a time when Mitchell and Jessen had desks at CTC, there's absolutely no reason why the two events couldn't themselves be linked.)

There's a lot that remains utterly obscure about this letter. But some of the redactions and seemingly inconsistent information regarding "possession" of the tapes by the CIA could easily be explained if an investigation into Mitchell and Jessen revealed they had the three tapes. It might explain the redacted adjective before the words transcript and video tape in the letter. It might explain why one component of the CIA had "contact" with the people who made the tapes (particularly if they were doing interrogation training for different groups in the CIA). And it might explain DOJ's skepticism about the accuracy of the transcripts that were then made into interrogation reports.

Speaking of which. Where is that Ramzi bin al-Shibh video, and why hasn't ACLU received it yet as part of their torture FOIA?