

WITH JUSTICE SOTOMAYOR SWORN IN, BACK TO TORTURE

I was putting together notes for my Netroots Nation panel next Saturday on torture accountability and realized it has been over three weeks since reports said Eric Holder would appoint a prosecutor in the next two. But according to the LAT, Holder still intends to appoint a prosecutor—and still intends to sharply circumscribe the investigation.

U.S. Atty. Gen. Eric H. Holder Jr. is poised to appoint a criminal prosecutor to investigate alleged CIA abuses committed during the interrogation of terrorism suspects, current and former U.S. government officials said.

A senior Justice Department official said that Holder envisioned an inquiry that would be "narrow" in scope, focusing on "whether people went beyond the techniques that were authorized" in Bush administration memos that liberally interpreted anti-torture laws.

The story reports that some of the potential subjects of investigation are still at CIA—though had been on the verge of retirement.

Bracing for the worst, a small number of CIA officials have put off plans to retire or leave the agency so that they can maintain their access to classified files and be in better position to defend against a Justice investigation.

"Once you're out, it gets a lot harder," said a retired CIA official who said he had spoken recently with former colleagues.

And it suggests that the contractors will also

be investigated.

The inquiry would also likely target private contractors who worked for the CIA during the interrogations.

But perhaps the most interesting revelation is that some of the torturers did not know what was in the John Yoo memo.

Beyond that, officials said it wasn't clear that any CIA interrogators were ever informed of the limits laid out in the Justice Department memo.

"A number of people could say honestly, correctly, 'I didn't know what was in it,' " said a former senior U.S. intelligence official familiar with the inner workings of the interrogation program.

That's interesting, first of all, because of the evidence that one of the documents used to develop the Bybee memo—and not the Bybee memo itself—described waterboarding as practiced. Is it possible that that was the only document the torturers read? Is it possible that Yoo wrote the Bybee memo knowing that the more expansive limits would be followed?

In any case, if it's true that the torturers didn't know the limits in the Bybee memo (or at least, that DOJ can't prove they knew those limits), then it all becomes a management issue again. Who didn't tell the torturers of the limits of the Bybee memo, George Tenet?

Of course, so long as Holder refuses to investigate those who somehow neglected to let the torturers know about the limits on torture as described in the Bybee memo, then it doesn't really matter, does it?