

A CATALOG OF THE DESTROYED TORTURE EVIDENCE

I just re-read Philippe Sands' *Torture Team* and, given the news of disappearing emails and documents, this passage struck me anew:

[Mike Dunlavey, who was in charge of Gitmo as they put together the torture plan for Mohammed al-Qahtani] would have liked to have gone back to the daily diaries and schedules that were kept on the computer system, together with reports that were sent out on a daily basis, and details of the videoconferences that had taken place with the Pentagon. "I need to see that stuff," he mused, "how am I going to get it?" It seemed doubtful that he would. "They were backed up at SOUTHCOM," he explained, but "a couple of months after I left there was a SNAFU and all was lost."

Sands goes on to wonder whether there might be a connection to the destruction of the torture tapes. Dunlavey left Gitmo in November 2002, so those materials would have been lost in late 2002 or early 2003, when we now know people were panicking about what to do about the torture tapes. That was also between the time when—at the end of November 2002—a lawyer from CIA's Office of General Counsel reviewed the tapes and claimed they matched the torture logs exactly, and the time when—in May 2003—CIA's Inspector General discovered they weren't an exact match. More importantly, CIA IG discovered there were 11 blank tapes, 2 broken ones, and 2 more mostly blank ones, suggesting that a first round of efforts to hide evidence on the torture tapes took place before CIA's IG reviewed them.

In other words, this "SNAFU" happened around the

same time as the first round of destruction of the torture tapes took place.

Since there are so many incidences of destroyed or disappearing torture evidence, I thought it time to start cataloging them, to keep them all straight.

- Before May 2003: 15 of 92 torture tapes erased or damaged
- Early 2003: Dunlavey's paper trail "lost"
- Before August 2004: John Yoo and Patrick Philbin's torture memo emails deleted
- June 2005: most copies of Philip Zelikow's dissent to the May 2005 CAT memo destroyed
- November 8-9, 2005: 92 torture tapes destroyed
- July 2007 (probably): 10 documents from OLC SCIF disappear
- December 19, 2007: Fire breaks out in Cheney's office

(I put in the Cheney fire because it happened right after DOJ started investigating the torture tape destruction.)

There are two more evidence-related issues pertaining to the torture program.

First, recall that the government has refused to turn over all of Abu Zubaydah's diaries to him [update: here's a more updated description of the diaries status from Jason Leopold]. The status of both the diaries and the legal argument over them remains largely sealed, so we can't know for sure whether all the diaries

remain intact. I believe they are just being withheld and haven't been destroyed, but we don't know for sure.

Also, remember that Alberto Gonzales was wandering around DC with a briefcase full of CYA documents just after he became Attorney General. Among those documents were draft and final versions of OLC opinions relating to torture, and possibly memos describing some operational aspects of the program.

The classified materials that are the subject of this investigation consist of notes that Gonzales drafted to memorialize a classified briefing of congressional leaders about the NSA surveillance program when Gonzales was the White House Counsel; draft and final Office of Legal Counsel opinions about both the NSA surveillance program and a detainee interrogation program; correspondence from congressional leaders to the Director of Central Intelligence; and other memoranda describing legal and operational aspects of the two classified programs.

Since this briefcase appears to have been about CYA, it is unlikely Gonzales would have destroyed any of them. But we know only that they were not in secure custody for about two years.

In other words, at least five pieces of evidence on torture has disappeared or been destroyed. But it could well be more than that.

John Durham? For a guy investigating disappearing evidence, you've been awfully quiet...