

# JAY ROCKEFELLER AND THE TORTURE TAPE INVESTIGATION

I've been writing a lot about the way CIA gamed briefings with Congress so they could destroy evidence of torture: how they created potentially misleading records about the September 2002 briefings with destroying the torture tapes in mind, how they created a record of Pat Roberts' approval for destroying the torture tapes in February 2003 but not Harman's disapproval of them, and how Crazy Pete Hoekstra got a really suspicious briefing the morning the torture tapes were destroyed.

But I've been neglecting the role Jay Rockefeller may play in all this.

Yesterday's AP-hosted CIA spin made a big deal of Harriet Miers' early 2005 order that CIA not destroy the torture tapes.

In early 2005, Rizzo received a similar order from the new White House counsel, Harriet Miers. The CIA was not to destroy the tapes without checking with the White House first.

It's in that context where they list all the requests that might cover the videotapes and explain why they weren't legally binding on the CIA: three judges orders and the 9/11 Commission request.

But that narrative left out a few more data points. Oddly, the AP seems to make nothing of John Negroponte's warning to Porter Goss—issued on or before July 28, 2005—not to destroy the torture tapes. Maybe that's because it reveals that months after Rizzo got the order from Harriet Miers, the Director of CIA was still actively discussing destroying the tapes. Maybe that's because, given Goss' apparent happiness with Rodriguez' destruction of the tapes in

November 2005, the evidence that Goss was considering destroying them three months earlier suggests complicity.

Now consider the two requests from Jay Rockefeller for John McPherson's report on the torture tapes.

In May 2005, I wrote the CIA Inspector General requesting over a hundred documents referenced in or pertaining to his May 2004 report on the CIA's detention and interrogation activities. Included in my letter was a request for the CIA to provide to the Senate Intelligence Committee the CIA's Office of General Counsel report on the examination of the videotapes and whether they were in compliance with the August 2002 Department of Justice legal opinion concerning interrogation. The CIA refused to provide this and the other detention and interrogation documents to the committee as requested, despite a second written request to CIA Director Goss in September 2005.

It was during this 2005 period that I proposed without success, both in committee and on the Senate floor, that the committee undertake an investigation of the CIA's detention and interrogation activities. In fact, all members of the congressional intelligence committees were not fully briefed into the CIA interrogation program until the day the President publicly disclosed the program last September. [my emphasis]

So in May 2005, Rockefeller asked John Helgerson for McPherson's report. Then in September 2005, Rockefeller asked Porter Goss for the report directly. And Porter Goss—the guy who was actively considering destroying the torture tapes in July 2005 and who ultimately applauded Rodriguez' success in destroying them—completely blew off Rockefeller's request.

Mind you, Rockefeller asked for the report on the tapes, not the tapes themselves. But we now know that the report lacked any mention of the things noted in the IG Report: descriptions of the broken and blank tapes. We also know that the report didn't do what it was purportedly intended to do: review whether the torturers had followed guidelines on torture.

Had Rockefeller gotten that report in 2005—in response to either his request of Helgerson or his request directly of Goss—he would have had good reason to at least suspect that the CIA had been engaging in a cover-up in November 2002 to January 2003, when it claimed to have reviewed whether Abu Zubaydah's torturers followed DOJ guidelines but really did no such thing. He would have had reason to wonder why a lawyer, having reviewed tapes with abundant evidence of tampering, hadn't even bothered to mention that tampering.

Which probably would have led him to ask for the tapes.

Mind you, like the 9/11 Commission, Rockefeller didn't subpoena the report (as he noted, his push for a torture investigation was thwarted, presumably by then SSCI Chair Pat Roberts, the guy who had signed off on destroying the tapes).

But for some reason the CIA doesn't want to admit it had this request pertaining to the torture tapes, in addition to all the requests from judges.