

# WHITHER STEPHEN KAPPES?

As I suggested yesterday, the investigation into Gul Rahman's death means there's a chance—teeny, presumably, but a chance nevertheless—that the investigation might move beyond the formerly-low level people implicated in the death (remember, both the guy who headed the Salt Pit and the station chief have gone onto bigger and better things at the CIA, so if they're targeted in any case, it would be a bigger deal than any other prosecution).

The reasons why pertains, in significant part, to Stephen Kappes.

Jeff Stein laid out the reasons why in this profile of Kappes (which also emphasizes the degree to which he micromanaged issues during his tenure as Assistant Deputy Director for Operations from 2002-2004). As Stein explains, Kappes personally helped create cable traffic describing Gul Rahman's death that would allow the CIA to claim his death was an accident.

According to an internal investigation, he helped tailor the agency's paper trail regarding the death of a detainee at a secret CIA interrogation facility in Afghanistan, known internally as the Salt Pit.

The detainee froze to death after being doused with water, stripped naked, and left alone overnight, according to reports in the *Washington Post* and *Los Angeles Times*. He was secretly buried and his death kept "off-the-books," the *Post* said.

According to two former officials who read a CIA inspector general's report on the incident, Kappes coached the base chief—whose identity is being withheld at the request of the CIA—on how to respond to the agency's investigators.

They would report it as an accident.

"The ADDO's direction to the field officer anticipated that something worse had occurred and so gave him directions on how to report the situation in his cable," one of the former officials says.

"The ADDO basically told the officer, 'Don't put something in the report that can't be proved or that you are going to have trouble explaining.' In essence, the officer was told: Be careful what you put in your cable because the investigators are coming out there and they will pick your cable apart, and any discrepancies will be difficult to explain."

As a result, the former official says, the Salt Pit officer's cable was "minimalist in its reporting" on what happened to the prisoner. "It seems to me the ADDO should have been telling him, 'Report the truth, don't hold anything back, there's an investigative team coming out, be honest and forthright. But that was not the message that was given to the chief of base by the ADDO.'"

We know from Jay Bybee's response to the OPR Report that from this cable traffic, CIA's Counterterrorism Center wrote a declination memorandum

Notably, the declination memorandum prepared by the CIA's Counterterrorism Section regarding the death of Gul Rahman provides a correct explanation of the specific intent element and did not rely on any motivation to acquire information. Report at 92. If [redacted], as manager of the Saltpit site, did not intend for Rahman to suffer severe pain from low temperatures

in his cell, he would lack specific intent under the anti-torture statute. And it is also telling that the declination did not even discuss the possibility that the prosecution was barred by the Commander-in-Chief section of the Bybee memo.

Kappes coached the officer to craft the cable traffic to make Rahman's death look like an accident, and then CTC (over which Kappes would also have had influence) then used those cables to repeat that claim.

Now that doesn't mean that John Durham needed to or did get Kappes' testimony about this coaching—or anything else that would directly implicate Kappes. But it does say that there is more evidence of a cover-up involving the highers up with Rahman than we know of with al-Jamadi (though don't forget that hood that disappeared in al-Jamadi's case, which is described in more detail here).

But it is worth remembering that Kappes left rather suddenly—and without as much fanfare as you'd expect—last April. At the time, Stein quoted sources tying Kappes' fatigue with the job to investigations of the CIA, including torture investigations.

A congressional intelligence committee source said Kappes, 59, was feeling ground down.

There were "investigations of his interrogators," the source said, and the White House was "taking away tools" in counterterrorism.

[snip]

Another former senior CIA official said Kappes's resignation "has been in the works for some time. Why today? Not sure."

"It's been rumored for six months," said another. "The idle speculation is that

things have just gotten too complex with all the investigations going on.”

One way an investigation can get complex—and motivate someone to leave public service—is if a person is asked to testify. Which is not to say that happened—only that if Stein’s reporting is correct (indeed, if the IG Report focuses on the role of the cables in the report of the death), then Kappes should be a key witness in Durham’s investigation.

The importance of Kappes in any case Durham can make is wildarsed speculation at this point. But—even ignoring the missing hood in the al-Jamadi case—I suggest we think of recent developments as a three-fold development. Not only did DOJ reveal that Durham has an active investigation of Rahman’s death. But, as reported by Carrie Johnson, Durham is also consider false statements charges in the torture tape destruction.

Sources tell NPR the Justice Department is also looking at false statements charges against a CIA employee who may have lied about the destruction of interrogation videotapes.

And, as reported by Goldman and Apuzzo, sometime last month the CIA Inspector General was asking questions about the Khalid el-Masri case (though DOJ closed that case last year).

All those details may be unrelated. It’s best to assume they are. But there’s a hint of possibility that they tie together some higher effort to cover up these cases.