

JOHN RIZZO: WE SHOULD HAVE BEEN PROUDER OF OUR COVER-UP

John Rizzo's second regret is that after the CIA destroyed torture tapes in 2005, they should have briefed Congress and the Courts on their attempt to cover-up their own torture.

Mind you, that's not exactly what he says. Here's his version:

We should have made damn sure that the intelligence committees' leadership—if not the full committees—were told about the destruction as soon as it happened. To take whatever lumps we deserved (and we clearly deserved some) then and there. We should have done the same thing with judges presiding over then-pending court cases potentially implicating the tapes, even if we weren't obligated to do so as a technical legal matter. In short, we should have told everyone in all three branches in the Government who had even an arguable need to know.

To some degree this looks like a statement designed for John Durham's benefit: a performance of real regret for doing something bone-headed (though why bother now that Durham has already let the statute of limitations expire on the case?). Though Rizzo probably overstates the outcome of Durham's investigation here, as there is a difference between "no evidence of a cover-up" and "insufficient evidence to charge when your President is demanding you look forward."

Ultimately, the various investigations would find no evidence of a cover-up, but rather that the whole thing was one monumental screw-up.

I'm particularly amused, however, by this statement.

In 2002, CIA videotaped the interrogation of the first captured Al Qaeda terrorist to be water-boarded. It was lawfully conducted, but the tapes were graphic and hard to watch. Almost immediately, those in CIA who made the tapes wanted to destroy them, fearing the faces of the interrogators on the tapes would put them in danger if and when they were ever made public.

We know the "hard to watch" and "fearing the faces of the interrogators" lines at most describe one, the smallest one, problem with the tapes. There were at least two other problems with them. First, they proved the torturers had exceeded DOJ guidelines.

As CIA's Inspector General made clear, the waterboarding that was depicted on the tapes in 2003 did not fall within the limits of the Bybee Two memo, both because the torturers used far more water, forced it down Abu Zubaydah's throat, and used it with far more repetition than allowed by the memo. Furthermore, the torturers exceeded even the guidelines the Counterterrorism Center set on sleep deprivation—though Yoo may (or may not have) have set the limit in the Bybee Two memo high enough to cover what had already been done to Abu Zubaydah. Folks in the IG's office had about seven more pages of concerns about what was depicted on the torture tapes (PDF 86-93)—but that all remains redacted. So the tapes did not, in fact, match the written guidelines DOJ gave them.

In addition, the tapes show that the torturers had already altered the tapes to hide something on them.

The other, potentially bigger problem for those depicted in the torture tapes has to do with what once appeared on the 15 tapes that the torturers altered before November

30, 2002, when CIA lawyer John McPherson reviewed them. Before that point, the torturers had altered 21 hours of the torture tapes, which covered at least two of the harshest torture sessions. Had someone done forensics on the tapes before they were destroyed, we might have learned what happened during those 21 hours. But by destroying the tapes completely, the CIA prevented that from happening.

One potential problem would be if the interrogators used a coffin—as they had planned to—after John Yoo judged that mock burials would be illegal. Or maybe they just broke the law in other ways.

But given that Rizzo's explanation for why the tapes were destroyed is so obviously a fiction, I'm guessing he knows well that the interrogation of Abu Zubaydah was not "lawfully conducted."

I'm most interested, though, in this BS from Rizzo:

While we had informed the intelligence committee leadership in early 2003 of the tapes' existence, we did not tell them on a timely basis about their unauthorized destruction. It was not our intent to hide that fact; it was simply a communications breakdown inside CIA in which then-Director Porter Goss neglected to inform the leadership as we agreed he would do the day he and I learned about the destruction. To this day I am convinced it was an unintentional oversight on his part, and I blame myself for not following up to make sure he had informed the Hill. The whole thing had just fallen through the cracks, something I saw happen far too often in my long Agency career.

Oh, my. Poor Porter Goss forgot to tell Congress that Jose Rodriguez had covered up illegal torture.

Or did he?

How is it that Crazy Pete Hoekstra got his very own briefing on torture on the very day the torture tapes were destroyed?

What went on at Crazy Pete's briefing—a briefing for Crazy Pete alone, without his counterpart Jane Harman, who had long expressed opposition to destroying the torture tapes, or his own staff—on the very day CIA destroyed the torture tapes?

That's right. As I have noted in the past, Crazy Pete Hoekstra (and Duncan Hunter, in a separate briefing) got a "complete brief" on the torture program on November 8, 2005, the day the torture tapes were destroyed.

An MFR lacking real detail (see PDF 32) at least reveals that Office of Congressional Affairs head Joe Wippl and C/CTC/LGL (who I believe would still be Jonathan Fredman) gave the briefing. A number of chronologies on Member Briefings included in this FOIA set note that no staffers attended these two briefings (see, for example, page 100 of this PDF), and those **appear** to be the only briefings for which CIA noted that no staffers attended. And note, minimal as the MFR on this is, it is one of just five or six briefings in the years before the torture tapes were destroyed for which CIA actually **did** do an MFR (one of the others is the briefing at which Pat Roberts okayed the destruction of the torture tapes).

In other words, this was one of the few torture briefings CIA's Office of Congressional Affairs saw fit to memorialize. They don't say what was briefed, really, but they've got proof that two men from the CIA briefed Crazy Pete and just Crazy Pete on something related to the torture program the day CIA destroyed the torture tapes.

It's not definitive they were talking about the torture tapes, mind you; after all, the torture apologists were in full court press

trying to prevent McCain's Detainee Treatment Act from taking away all the torture toys.

But one more thing suggests there may be a connection. On the evening of the same day Crazy Pete got this briefing, the same day CIA destroyed the torture tapes, someone sent an email with a list of *all* Congressional briefings related to the torture program (see page 90-92 of the second PDF). It says only, "Per your request please find attached List of Members who have been briefed and a couple of other categories." The list is interesting for two reasons. First, because the email forwarded a list with some key errors, in that it listed Harman, not Pelosi, as having been briefed at the first torture briefing in September 2002 (with a handwritten note, "error, it is Pelosi per 145166"). It also includes an error that remained in the CIA's own records until last year, showing Goss, not Crazy Pete, as the Chair in a meeting in March 2005 (it's unclear the meeting with Harman happened; what appears to have happened instead is an extra briefing with Dick Cheney for Pat Roberts and Jay Rockefeller).

More interestingly, the Crazy Pete and Hunter briefings—which had taken place that very day—**were already in the Excel spreadsheet showing all the briefings**. It's as if they briefed Crazy Pete and Hunter just so they could print this out as part of a CYA attempt to say that Congress had approved the torture tape destruction. And maybe Crazy Pete and Hunter did just that.

Goss' so-called oversight seems a lot more suspicious given that one of Dick Cheney's lackies, Joe Wippl, and one of the people involved in the tape cover-up from CTC was off briefing Hoekstra that same day.

Now, we'll never know, because as with most key briefings, the CIA didn't make a record of what

went on the briefing (and why would you, if you had gone to the trouble of excluding even Hoekstra's aides?).

But as with Rizzo's first regret, this seems to be more about rehashing the fictions that got him out of legal trouble than any actual regret.