ROBERT EATINGER, LAWYER WHO APPROVED TORTURE TAPE DESTRUCTION, TRIES TO INTIMIDATE SENATE INVESTIGATORS

Dianne Feinstein just gave a barn burner of a speech explaining the CIA/SSCI fight over the Torture Report. There are a lot of details I'll return to.

But one of the most important issues, in my mind, is the detail that the Acting General Counsel of the CIA, Robert Eatinger, referred the Senate Intelligence Committee investigators to DOJ for investigation. (h/t to DocexBlog for identifying Eatinger) Feinstein correctly interpreted this as an attempt to intimidate her staffers as they complete the investigation.

And, as Feinstein made clear, Eatinger is a key focus of the report. Feinstein revealed that Eatinger (whom she did not name) was named, by name, (if I heard Feinstein's claim correctly) 1,600 times in the Torture Report.

At least some of those mentions surely describe CIA's decision to destroy the torture tapes, an act Eatinger sanctioned.

> Former CIA clandestine branch chief Jose A. Rodriguez Jr., who ordered the destruction of the tapes, has said through his attorney that he based his decision on legal advice from agency lawyers. The lawyers, Steven Hermes and Robert Eatinger, did not endorse the tapes' destruction but rather concluded there was "no legal impediment" to disposing of them, according to sources briefed on their advice.

> Hermes and Eatinger, who only recently were interviewed by Durham, continue to work at the agency and have retained counsel, the sources said.

Feinstein described Eatinger's key role as the Counterterrorism Center's chief lawyer (presumably after Jonathan Fredman left). Some things CTC lawyers did were:

- Approved the use of sleep deprivation before DOJ considered the question
- Altered the record of the original briefing to Nancy Pelosi and Porter Goss
- Used a John Yoo freelanced memo as the basis of advice to CIA on torture
- Collaborated with John Yoo to write a "Legal Principles" document that authorized otherwise unauthorized torture techniques

Lawyers probably associated with CTC also lied about the treatment of Hassan Ghul in 2004.

Eatinger also contributed to a CIA cover-up attempt in a key State Secrets case.

There's a lot that's amazing about this story. But I find it particularly telling that a lawyer trying to protect his own ass — trying to hide details of the **1,600 mentions** of his name in the Torture Report — has targeted Senate Intelligence Committee staffers.

Update: Given that Eatinger is apparently the person who referred the Senate staffers, it is significant that Feinstein started her speech by raising the torture tape destruction.

The origin of this study: The CIA's detention and interrogation program began operations in 2002, though it was not until September 2006, that Members of the Intelligence Committee, other than the Chairman and Vice Chairman, were briefed. In fact, we were briefed by then-CIA Director Hayden only hours before President Bush disclosed the program to the public.

A little more than a year later, on December 6, 2007, a New York Times article revealed the troubling fact that the CIA had destroyed videotapes of some of the CIA's first interrogations using so-called "enhanced techniques." We learned that this destruction was over the objections of President Bush's White House Counsel and the Director of National Intelligence.

After we read about the tapes' destruction in the newspapers, Director Hayden briefed the Senate Intelligence Committee. He assured us that this was not destruction of evidence, as detailed records of the interrogations existed on paper in the form of CIA operational cables describing the detention conditions and the day-to-day CIA interrogations.

The CIA director stated that these cables were "a more than adequate representation" of what would have been on the destroyed tapes. Director Hayden offered at that time, during Senator Jay Rockefeller's chairmanship of the committee, to allow Members or staff to review these sensitive CIA operational cables given that the videotapes had been destroyed.