

MAUREEN MAHONEY'S DIRTY BOMB BLOWS UP

Back in 2010, I pointed out a key problem with Jay Bybee lawyer Maureen Mahoney's defense of Bybee's endorsement of the torture memos.

Mahoney spends three pages of her response (PDF pages 81 to 84) trying to justify the Bybee Memo's unsupported reliance on a ticking time bomb scenario. After spending most of the discussion focusing on whether self-defense was viable in court (asserting, "the Memo's intended audience would have been well aware that a ticking time bomb scenario had yet not been tested in the U.S. courts"), Mahoney tries to refute the OPR Report's argument that the ticking time bomb scenario was not a real world scenario.

OPR states that the Memo should have discussed a real world situation in which a defendant could prove that he reasonably anticipated that torture would produce information directly responsible for preventing an immediate impending attack. But see *id.* at 31 n.17 (mentioning the ticking time bomb scenario as precisely such a real world situation)⁴⁶

Which connects to this footnote.

Indeed, the OLC attorneys working on the 2002 Memo had been briefed on the apprehension of Jose Padilla on May 8, 2002. Padilla was believed to have built and planted a dirty bomb-a radiological weapon which combines radioactive material with conventional explosives-in

New York City. It is easy for OPR, seven years removed from the horror of 9/11 to scoff at the notion of a ticking time bomb scenario, but the context in which these memos were written simply cannot be forgotten.

In other words, Maureen Mahoney, with a metaphorical straight face, points to the claim that Jose Padilla had “was believed to have built and planted a dirty bomb” to support her claim that the ticking time bomb is a realistic scenario!

Jose Padilla, of course, was arrested based on claims made by Abu Zubaydah. The [dirty bomb claim](#)—particularly the claim that Padilla **had planted** a dirty bomb, as opposed to just discussed the idea with Abu Zubaydah—seems to have come as a result of Abu Zubaydah’s torture. That torture was retroactively authorized by a memo signed by Maureen Mahoney’s client.

And now Mahoney is using evidence derived from that torture to argue that the claims in that memo were justified.

That’s one of the claims the Torture Report debunks.

This information was inaccurate. (181)

The Abu Zubaydah section makes clear he never believed Jose Padilla could carry out a dirty bomb attack.

Abu Zubaydah stated he did not believe the plan was viable and did not know the names of the two individuals, but provided physical descriptions of the pair. This information was acquired

after Abu Zubaydah was confronted with emails indicating that he had sent the two individuals to KSM. (29)

The apologists want credit for this because it happened after AZ had begun to be subjected to sensory deprivation.

So even the torture apologists point to the ticking time bomb as a success, but in pointing to it they point to a warning that it wasn't really a plot.

Which it wasn't.

Boom.