

GINA HASPEL SEEMS TO ADMIT KNOWING JANE HARMAN OPPOSED TORTURE TAPE DESTRUCTION — JUST NOT CARING

Gina Haspel provided two significantly different responses in questions for the record about her knowledge of Jane Harman's opposition to torture tape destruction and Carl Levin's proposal to launch a commission to investigate torture.

Here's how she answered a Dianne Feinstein question about Harman, who first said CIA shouldn't destroy the tape in 2003 while serving as Ranking Member.

Question: (U) At the time of the tapes' destruction, were you aware of the request from Representative Jane Harman that the videos be preserved? Were you aware of CIA attorneys' concerns that congressional investigators or a congressionally authorized commission might seek access to them? Were you aware of the White House Counsel's and Director of National Intelligence's instructions that they not be destroyed?

Response: (U) To the best of my recollection, at the time of the destruction of the videotapes, I was aware of concerns raised in several quarters about destroying the tapes, but I was told that there were no legal prohibitions to destroying the tapes. Ultimately, the decision to destroy the tapes was made by the former Deputy Director for Operations.

In response to a question about Harman, Haspel

admits that she was aware of opposition to destroying the tapes (Harman's opposition showed up in a number of internal reviews, so there would have been a paper trail documenting her knowledge). Her response suggests Congressional opposition to destroying the tapes did not affect the legal question.

Compare that to her answer about Carl Levin's initial efforts to conduct an inquiry into torture just days before the tapes were destroyed.

Question: (U) Were you aware that legislation had been introduced in the U.S. Congress to review detainee issues when you drafted the cable authorizing the destruction of detainee interrogation videotapes on November 8, 2005? Please describe all conversations you had regarding congressional oversight of this matter prior to the destruction of the videotapes.

Response: (U) To the best of my recollection, I was not aware of this proposed legislation and I do not recall any discussions pertaining to congressional oversight of detainee videotapes prior to the destruction in November 2005.

Here, she offers a "do not recall" answer, probably because she and Jose Rodriguez did not memorialize any discussions of the possibility that Congress might shortly demand that CIA retain the tapes, if they had any discussions, so there was no proof she knew of it. She's also discounting Harman's objection as something other than "congressional oversight of detainee videotapes."

Ultimately, it all comes down to not giving a shit what Congress thinks, though, while carefully protecting herself against claims that they destroyed the tapes in response to Levin's actions, as opposed to the public reporting on

the torture program that also immediately preceded the tape destruction.

TORTURE TAPE

This is an outdated replacement for one I've lost—I'm still looking for that one.

September 17, 2001: Bush signs Memorandum of Notification authorizing CIA to capture, detain, and interrogate al Qaeda figures.

September 2001: CIA/OGC begins research on interrogations issues.

October 21, 2001: OLC memo eviscerating 4th Amendment.

December 17, 2001: DoD OGC asks JPRA for information about detainee "exploitation."

December 2001 or January 2002: James Mitchell asked Bruce Jessen to review documents describing al Qaeda resistance training. They generated a paper on al Qaeda resistance capabilities and countermeasures.

December 18, 2001: Ibn Sheikh al-Libi captured. After being tortured, al-Libi made up stories about Al Qaeda ties to Iraq.

December 27, 2001: Rumsfeld announces plans to hold detainees at Gitmo.

January 20, 2002: Bybee to Abu Gonzales memo specifying that common article 3 of the Geneva Convention does not apply to "an armed conflict between a nation-state and a transnational terrorist organization."

January 25, 2002: Gonzales memo for Bush recommends against applying the Geneva Convention to enemy detainees.

January 2002: Supplemental Public Affairs Guidance on Detainees affirms Geneva Convention

wrt *media* photographs.

February 2, 2002: William Taft argues for the application of Geneva Conventions.

February 7, 2002: Bush memo on Geneva Conventions.

February 12, 2002: Jessen sends paper on al Qaeda resistance capabilities to JPRA commander Randy Moulton.

Before February 22, 2002: After the interrogation team declares al-Libi compliant, Cheney orders him to be waterboarded again.

February 22, 2002: DIA voices doubts about al-Libi's claims of Iraq-al Qaeda ties.

March 28, 2002: Abu Zubaydah taken into custody.

March 29, 2002: James Mitchell closes consulting company, Knowledge Works, in NC.

March 31, 2002: Abu Zubaydah flown to Thailand.

April 2002: CIA OGC lawyers begin conversations with John Bellinger and John Yoo/Jay Bybee on proposed interrogation plan for Abu Zubaydah. Bellinger briefed Condi, Hadley, and Gonzales, as well as Ashcroft and Chertoff.

April 3, 2002: CIA officer making notes on interrogation of Abu Zubaydah.

April 11, 2002: Yoo formally begins work on torture memos—but he had already done research by that point.

April 16, 2002: Bruce Jessen circulates draft exploitation plan to JPRA Commander. Yoo's initial research discussed at NSC meeting.

April 17, 2002: Cable providing guidance on retention of videotapes.

April 27, 2002: Second email in series pertaining to torture tapes and their destruction.

April 30, 2002: First draft of Bybee Memo.

May 2, 2002: The US "un-signs" the International Criminal Court treaty.

May 8, 2002: Jose Padilla taken into custody based on material warrant signed by Michael Mukasey and based on testimony from Abu Zubaydah.

Mid-May 2002: CIA OGC lawyers meet with Ashcroft, Condi, Hadley, Bellinger, and Gonzales to discuss alternative interrogation methods, including waterboarding.

May 17, 2002: Sleep deprivation of Binyam Mohamed—deemed "cruel, inhuman, and degrading" by UK Court—completed. This was "new strategy designed by an expert interviewer." Second draft of Bybee Memo completed.

May 22, 2002: Bybee nominated for Circuit Court Judge.

Mid to Late May: Ali Soufan leaves interrogation because of "borderline torture" (threat of small box confinement).

May 28, 2002: CIA HQ sends cable to Abu Zubaydah's interrogators.

June 25, 2002: Moussaoui arraigned.

June 26, 2002: Third draft of Bybee Memo drafted.

July 1-2, 2002: JPRA conducts two-day training for CIA officers. Approved JPRA-techniques at the time include, "body slaps, face slaps, hooding, stress positions, walling, immersion in water, stripping, isolation, and sleep deprivation, among others." The training included a demonstration of waterboarding. Two CIA lawyers explained that officers could use "all forms of psychological pressure discussed and all of the physiological pressures with the exception of the 'water board.'" "

July 8, 2002: Fourth draft of Bybee Memo; first one shared outside of OLC.

July 10, 2002: Date of first interrogation report from Abu Zubaydah cited in 9/11 Report.

July 11, 2002: Chertoff briefing on Bybee memo.

July 12, 2002: Yoo meets with WHCO Gonzales—and probably Addington and Flanigan—on draft.

July 13, 2002: CIA OGC (Rizzo?) meets with Bellinger, Yoo, Chertoff, Daniel Levin, and Gonzales for overview of interrogation plan and for briefing of Bybee Memo draft. Yoo writes initial okay for torture. Chertoff tells Yoo to draft letter saying DOJ won't pre-decline to prosecute before actions.

July 16, 2002: Yoo meets with Gonzales and probably Addington and Flanigan. All say they have no memory of what was discussed. The "pre-declination" and "advance pardon" discussion had already taken place. Yoo showed them the July 13 "how to break the law" memo.

July 17, 2002: Tenet met with Condi, who advised CIA could proceed with torture, subject to a determination of legality by OLC. Yoo "No pre-declination" letter drafted BUT NEVER SENT.

Late July 2002: Bybee discusses SERE with Yoo and Ashcroft.

July 24, 2002: OLC advises CIA that Ashcroft concluded attention grasp, walling, facial hold, facial slap, cramped confinement, and wall standing were legal. Yoo said he was waiting on more info from CIA on the more controversial techniques (including waterboarding and presumably the still redacted one) Date of Abu Zubaydah's psychological profile.

July 26, 2002: OLC tells CIA waterboarding is legal. CIA begins to waterboard Abu Zubaydah.

July 31, 2002: DIA issues second report doubting al-Libi's confession of Iraq-al Qaeda ties.

August 1, 2002: "Bybee Memo" (written by John Yoo) describes torture as that which is equivalent to :the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

11:00: One of only Bybee drafts with comments;

4:45: Another Bybee comment draft; 10:30PM OLC

faxes signed Bybee Two memo to CIA.

August 2, 2002: CIA (and DOD, though Yoo disclaims this) receives Bybee One memo—CIA by 4PM.

August 20, 2002: Field writes HQ discussing policy for security risks of videotape retention and suggests new procedure for videotape retention and disposal.

September 4, 2002: Porter Goss and Nancy Pelosi briefed on OLC memos, not told Abu Zubaydah had already been tortured.

September 6, 2002: One page email between CIA attorneys on revisions regarding disposition of torture tapes. Five-page email destruction proposal for torture tapes.

September 11, 2002: Ramzi bin al-Shibh captured, purportedly as a result of intelligence gained through torturing Abu Zubaydah.

September 16, 2002: JTF 170 Gitmo attend training at JPRA's SERE school.

September 25, 2002: Jim Haynes, John Rizzo, David Addington, Jack Goldsmith, Patrick Philbin, Alice Fisher visit Gitmo and Charleston (Padilla) and Norfolk (Hamdi) briggs.

September 27, 2002: Bob Graham and Richard Shelby briefed on torture.

October 2002: Abd al-Rahim al-Nashiri captured. Held and interrogated in Dubai for a month then handed over to US custody.

October 2, 2002: Gitmo lawyers draft list of new techniques; Johnathan Fredman (Chief Counsel to CTC) attends meeting.

October 11, 2002: Date of photograph Abu Zubaydah associated with contents of torture tapes.

October 11, 2002: Dunlavey requests authority to use aggressive techniques.

October 25, 2002: General Hill forwards

Dunlavey's request to Richard Myers. Field writes HQ "discussing the security risks of videotapes are retained."

November 2, 2002: CIA proposes more intense counterterrorism program for "detained unlawful combatants," specifying torture techniques.

November 6, 2002: One page email from CIA officer to officers and attorneys "following up with the proper procedures for destruction of the interrogation video tapes."

November, 2002: Afghan detained in Kabul freezes to death in CIA custody.

November, 2002: Pavitt dispatches investigative team (to Afghanistan?) and informs Helgeson of interrogation program.

November, 2002: CTC implements training program for officers assigned to the Interrogation Program.

"Twelve Days into Nashiri's Interrogation:"
Nashiri waterboarded two times.

November 15, 2002: Three-page email chain, including email from field to officers and attorneys at HQ, "expressing personnel concerns with the disposition of the video tapes" with "headquarters request to have a random independent review of the video tapes, before they are destroyed." al-Nashiri brought to torture site.

November 16, 2002: One-page email from Field to attorneys at HQ "informing headquarters of personnel concerns regarding the videotapes." Three-email chain (possibly including earlier email?) discussing draft language on logistics of destroying torture tapes.

November 19, 2002: HQ writes field discussing disposition of torture tapes and "the duties of the CIA attorney who is visiting the field to review the tapes."

November 20, 2002: Date on which spot report on Nashiri's interrogation—later forwarded to

IG-written. Field writes HQ "discussing the OGC review" of torture tapes.

November 21, 2002: 5-page cable from field to HQ on Nashiri's interrogation.

November 22, 2002: Nashiri's capture publicly announced.

November 23, 2002: Abuse of Mohammed al-Khatani begins.

November 27, 2002: Haynes recommends Rumsfeld approve most aggressive techniques for use at Gitmo. Field writes HQ requesting to destroy torture tapes. HQ writes field "regarding disposition of tapes and discussion action for base compliance according to policy guidance." [Probably the day they waterboarded al-Nashiri, "without achieving any results."

November 28, 2002: Cable discusses CIA attorney's travel to field station to "survey video tapes and review pertinent logs, and cable traffic."

November 30, 2002: Field writes HQ regarding "disposition" of classified media in field.

December 1, 2002: CIA attorney's notes. Possibly on content of video?

December 2, 2002: Rumsfeld approves aggressive techniques for Gitmo. Yoo gives Haynes advice about a particular detainee, probably al-Qahtani.

December 3, 2002: Habibullah dies after being tortured. One page email outlining destruction plan for torture tapes. CIA HQ writes field regarding closing facility and destroying torture tapes.

December 4, 2002: CIA stops taping Abu Zubaydah and al-Nashiri's interrogations.

December 9 or 10, 2002: Dilawar dies after being tortured.

December 19, 2002: Cable in coordination-~~destruction~~ of tapes currently held

in field. Short decision note on tapes issue (request for decision).

December 20, 2002: 3-page memo with cable from HQ to field regarding policies on tape usage and destruction. "Draft/outline of leaks memo" with request to destroy tapes. Email providing guidance on a short note decision regarding torture tapes.

December 23, 2002: First draft of memo by CIA OGC regarding disposition of torture tapes.

December 24, 2002: Unclassified change to first draft of memo on disposition of torture tapes. One-page email confirming receipt of memo regarding torture tapes (email has "Tapes-CTC memorandum re tapes" as subject).

Late December 2003: Unauthorized interrogation techniques used on al-Nashiri.

January 2003: Pavitt informs Helgerson of al-Nashiri abuse.

January 2003: CIA OIG starts investigation of detainee interrogation.

January 2003: Leonie Brinkema grants Moussaoui right to interview Ramzi Bin-al-Shibh by video.

January 9, 2003: Memo summarizing review of torture tapes. (An earlier Vaughn describes it-document 60-as five pages, not six.

January 12, 2003: Email asking what would make video tapes an official record. Email proposing how to reference torture tapes for briefing. Third email informing and reminding officers what actions would make the torture tapes an official record.

January 13, 2003: HQ writes Field providing guidance on procedures for retention of Abu Zubaydah videotapes. Field responds to email regarding maintenance of video recordings.

January 15, 2003: After having three-times orally warned Jim Haynes that Gitmo interrogation techniques "could rise to the level of torture," Alberto Mora drafts memo and

threatens to sign it unless techniques stopped. Techniques stopped. Rumsfeld convenes "Working Group" on interrogation, but Haynes directs Yoo to draft memo anyway.

January 16, 2003: Haynes and Rummy probably briefed on CIA torture.

January 24, 2003: DOJ finds out about abuse of al-Nashiri when Rizzo, Muller and someone else (Rodriguez) meet with Chertoff, Fisher, Yoo, and someone else to discuss torture.

January 28, 2003: Tenet writes memo to OLC outlining acceptable interrogation and confinement methods and stating that records must be kept. OGC informed of IG review. Helgeson informs Yoo CIA IG is looking into one of the abuse allegations.

February 2003: CIA claims to have informed Intell leadership of torture tapes' destruction; though SSCI has no records.

February 4, 2003: Pat Roberts is briefed on torture, along with staff director and minority staff director of Committee; Jay Rockefeller did not attend briefing.

February 5, 2003: Jane Harman and Porter Goss briefed on interrogation methods and torture tape.

February 7, 2003: Unclassified email asking how to accommodate a request for a review of video tapes.

February 10, 2003: Harman writes letter advising against the destruction of the tape.

February 19, 2003: Interview report for review of interrogations. Response to Harman drafted.

February 22, 2003: Email discusses meeting between White House and CIA "regarding CIA's response to a congressional inquiry." Email is titled, "Harmon Letter."

February 28, 2003: Scott Muller responds to Harman without addressing the tapes.

March 2003: According to NYT report, the CIA briefs Congress on destroying the torture tapes.

March 2003: Public Affairs Guidance for Media Coverage of EPWs and Detainees allows photos (within guidelines) but prohibits photographs of custody operations or interviews.

March 1, 2003: Khalid Sheikh Mohammed and al-Hasawi captured.

March 3, 2003: Yoo sends Scott Muller draft of Yoo memo—so Muller could make sure it did not detract from Bybee Memos.

March 5, 2003: Majid Khan captured.

March 6, 2003: KSM's torture begins.

March 13, 2003: Jay Bybee leaves.

March 14, 2003: John Yoo opinion on torture, governing interrogations by DOD.

After March 2003: Roberts and Rockefeller briefed on torture.

April 2003: CIA Office of Medical Services disseminates draft guidelines for treatment of detainees.

April 28, 2003: Legal Principles on torture hand carried to John Yoo.

April 29, 2003: Walid bin Attash and Ali Abdul Aziz Mohammed captured.

May 2003: Government tells Leonie Brinkema it has no interrogation tapes.

May 2003: CIA OIG reviews torture tapes at black site.

May 30, 2003: Yoo leaves OLC.

June 2003: DDO Guidelines require that subject pose a continuing serious threat.

June 2003: Abdul Weil dies after being interrogated by CIA.

June 2, 2003: Leahy writes Condi asking if detainees are treated humanely.

June 6, 2003: 9/11 Commission requests “all TDs and other reports” of intelligence information obtained from interrogations of forty named individuals from CIA, DOD, and FBI.

June 8, 2003: Bin Amin captured.

June 16, 2003: Legal Principles on torture faxed to Pat Philbin.

June 26, 2003: In speech, Bush says we will prosecute those who torture. In response, Tenet requests and gets memo approving of water-boarding—giving the program “top cover.”

July 13, 2003: CIA Directorate of Intelligence, *Khalid Shaykh Muhammed: Preeminent Source on Al-Qa’ida* (July 13, 2004) created.

June 16, 2003: Referring to Legal Principles, CIA MFR says was “drafted in substantial part by John Yoo.” (almost certainly OGC statement)

June 20, 2003: Meeting on how to respond to Leahy inquiry, attended by Scott Muller, Deputy WHCO David Leitsch, John Bellinger, Pat Philbin, and Whit Cobb (from DOD OGC). Philbin says treatment could be consistent with CAT. Response went out under Haynes signature.

July 2003: Goldsmith offered OLC AAG.

July 29, 2003: Tenet and Muller meet with Cheney, Condi, Ashcroft, Acting head of OLC?, DAAG, Gonzales, and Bellinger to discuss torture. Principals reaffirmed that program was lawful. CIA claims Ashcroft reaffirmed support for program, but Ashcroft contested their description of his approval. CIA showed the “Legal principles” slide.

August 4, 2003: 13-page cable discussing “disposition of the 92 videotapes.”

August 11, 2003: Bin Lep and Hambali captured.

August 13, 2003: Rumsfeld approves plan for Mohamedou Ould Slahi including sensory deprivation and “sleep adjustment.”

Mid-August 2003: CJTF HQ in Iraq requests “wish

list" of interrogation techniques, stating "we want these detainees broken."

August 31 to September 9, 2003: Major General Geoffrey Miller ordered to Abu Ghraib from Gitmo.

September 2003: OMS updates guidelines for detainee treatment.

September 4, 2003: Roberts and Rockefeller briefed; presentation compared torture with other interrogation methods.

September 4, 2003: Goss and Harman briefed; presentation compared torture with other interrogation methods.

September 10, 2003: Government refuses to let Moussaoui question Al Qaeda witnesses.

September 16, 2003: Colin Powell and Rummy briefed on torture (CIA implied Ashcroft attended but he did not).

September 22 and September 25, 2003: 9/11 discussions with CIA about interrogation process.

October 1, 2003: Hamdi petition filed with SCOTUS.

October 6, 2003: Goldsmith sworn in.

October 7, 2003: Goldsmith read into torture.

October 7, 2003: ACLU first FOIA documents pertaining to detainee interrogations.

October 14 and 16, 2003: 9/11 Commission sends questions to CIA General Counsel Scott Muller on interrogations.

October 16, 2003: Muller writes MFR claiming he told Goldsmith about "Legal Principles" when he read him into torture on October 7.

October 31 and November 7, 2003: Response to 9/11 Commission with little new information.

November 4, 2003: Manadel al-Janabi killed in Iraq.

Fall 2003: General Sanchez visits Abu Ghraib regularly.

December 2003: Jack Goldsmith tells Rummy he will withdraw March 2003 opinion on torture.

December 23, 2003: 9/11 Commission requests access from Tenet to seven detainees; Tenet says no; Lee Hamilton asks for any responsive documents.

January 5, 2004: 9/11 Commission decides CIA responses inadequate.

January 9, 2004: SCOTUS agrees to hear Hamdi.

January 13, 2004: Joseph Darby gives CID a CD of images of abuse. CIA IG report 44 pages long.

January 15, 2004: Memo to Gonzales, Muller, and Steve Cambone asking for more information on interrogations.

January 15, 2004: General Craddick receives email summary of Abu Ghraib story.

January 19, 2004: General Sanchez requests investigation of allegations of abuse.

January 20, 2004: Craddick and Admiral Keating receive another notice of abuse.

January 2004: General Myers learns of Abu Ghraib abuse.

January 23, 2004: Hassan Ghul captured.

January 24, 2004: FBI On Scene Commander tells FBI Deputy Assistant Director Bald about Abu Ghraib.

January 26, 2004: After negotiations with Gonzales, Tenet, Rummy, and Christopher Wray from DOJ, 9/11 Commission accepts asking questions through intermediary.

January 31, 2004: Taguba appointed to conduct investigation.

January 2004: CIA OIG Report drafted. OLC would get a copy, including CIA OGC's comments.

February 2004: Manadel al-Janadi's murder referred to EDVA.

February 4, 2004: IG Report drafted.

February 9, 2004: 9/11 Commission requests "all TDs and reports related to the attack on the USS Cole, including intelligence information obtained from the interrogations of Abd al Rashim al Nashiri" from CIA.

February 2 to 29, 2004: Taguba's team in Iraq, conducting investigation.

February 24, 2004: CIA OGC submits comments on IG Report.

March 2, 2004: Padilla interrogation. The tape of the interrogation would later disappear. Request for reaffirmation of torture approvals faxed to Jack Goldsmith. OPR report reports that Muller asked for reaffirmation of Yoo letter, Bybee One, Bybee Two, and Legal Principles. Goldsmith says this was first time he had ever seen Legal Principles, that it appeared to be CIA doc.

March 9, 2004: Taguba submits his report.

March 13, 2004: Goldsmith and Philbin go to Comey's house to tell him they'll have to withdraw the torture memo.

Late March, 2004: 60 Minutes II starts on Abu Ghraib story.

April 2004: General Miller ordered to Abu Ghraib to fix problems.

April 7, 2004 (approximately): 60 Minutes II acquires photos authenticating Abu Ghraib story.

April 12, 2004: Email discussing what would make torture tapes an official record.

Mid-April, 2004: General Myers calls Dan Rather to ask him to delay story.

Mid-April, 2004: Taguba begins to brief officers on his report ("weeks" before his May 6 meeting with Rummy).

April 23, 2004: Goldsmith approves four techniques for use by DOD: "verbal strategems," "Mutt and Jeff," providing/removing reward, isolation.

April 28, 2004: Hamdi and Padilla argued before SCOTUS. Paul Clement assures the Court that we don't torture. 60 Minutes breaks Abu Ghraib story and proves he's wrong.

May 2004 (within days after Abu Ghraib becomes public): CIA briefing for Addington, Bellinger, and Gonzales on torture tapes.

May 6, 2004: Taguba meets with Rummy, Wolfowitz, Cambone, Myers, and others

In the meeting, the officials professed ignorance about Abu Ghraib. "Could you tell us what happened?" Wolfowitz asked.

[snip]

"Here I am," Taguba recalled Rumsfeld saying, "just a Secretary of Defense, and we have not seen a copy of your report. I have not seen the photographs, and I have to testify to Congress tomorrow and talk about this."

May 7, 2004: Rummy testifies before Congress on Abu Ghraib.

May 7, 2004: CIA OIG draft report on interrogation techniques.

May 2004: Muller meets with Gonzales, Addington, Bellinger, and "senior DOJ officials" about the IG report.

May 10 2004: Sy Hersh's Abu Ghraib story.

May 11, 2004: Goldsmith memorializes approval of four techniques for use by DOD.

May 17, 2004: OMS Guidelines on torture.

May 19, 2004: FBI reiterates Agents should not be involved in coercive interrogations.

May 20, 2004: 9/11 Commission asks about Abu

Zubaydah reference to Saudi prince; they get no response.

May 25, 2004: In a letter to Helgeson, Jack Goldsmith describes having recently received the IG Report from Muller.

May 27, 2004: Goldsmith tells Muller to stop waterboarding.

June 3, 2004: Tenet announces his resignation; John McLaughlin resigns as well. SOUTHCOM Commander James Hill traces source of abusive techniques used on al-Qahtani to SERE training.

June 2004: (After announcing his resignation) Tenet requests more explicit approval waterboarding.

June 7, 2004: WSJ refers to March 2003 OLC opinion.

June 8, 2004: WaPo reports on details of Bybee Memo.

June 9, 2004: Goldsmith speaks to Yoo about Legal Principles.

June 10, 2004: Goldsmith writes memorandum to the files stating that Yoo vaguely remembered giving Haynes advice on torture in late 2002. Goldsmith tells Muller that the Legal Principles are not an opinion of OLC, demands any more request for opinions to be in writing.

June 14, 2004: Muller writes letter to Goldsmith explaining that the Legal Principles were meant to be used with the OIG report.

June 15, 2004: Goldsmith informs Ashcroft he will withdraw Bybee Memo and resigns. This effectively leaves the CIA with no legal protection for the water-boarding it had already done.

June 16, 2004: Goldsmith submits resignation letter, originally w/August 6 last date.

June 17, 2004: Jack Goldsmith announces his resignation.

June 18, 2004: Goldsmith writes Tenet telling him the IG Report mis-represents Ashcroft's statements. Goldsmith transmits comments to Helgerson, notes two areas of dispute.

June 21, 2004: Frank Wolf requests OPR investigation of Bybee Memo.

June 22, 2004: In an off-the-record briefing, Comey, Goldsmith, and Philbin renounce Bybee Memo. Rizzo sends Philbin copy of earlier approval from Yoo. Muller responds to Goldsmith saying he had forwarded the complaints to John Helgerson, but would release the IG Report that week.

June 23, 2004: Muller transmits CIA OIG report to Roberts, Rockefeller, and staff directors, with Goldsmith's objections.

June 24, 2004: Ted Olson announces his resignation, citing frustration that he did not learn of memos justifying legal decisions.

June 28, 2004: Hamdi decision.

June 29, 2004: John McLaughlin confirms that CIA "has taken and completed all reasonable steps necessary to find the documents in its possession, custody, or control responsive" to the 9/11 Commission's formal requests and "has produced or made available for review" all such documents.

July 2004: Scott Muller resigns as General Counsel of CIA.

July 2004: Principals meeting—all agree to seek new OLC memo.

July 2004: CIA briefs Roberts and Rockefeller on IG Report; CIA indicates it is determining whether program consistent with CAT.

July 2, 2004: Helgerson responds to Goldsmith, telling him they can't revise the Report, but will circulate corrections with the document. Bellinger, Comey, Muller meet, after which Muller followed up to say approved techniques included all the Bybee Memo techniques except

waterboarding, and all the April 2003 DOD techniques.

July 7, 2004: Goldsmith follows up on July 2 conversation, making it clear this pertains to specific detainee, cautioning CIA to stick to limits in documents.

July 11, 2004: Tenet's resignation effective.

mid-July 2004: CIA gets its more detailed authorization for water-boarding.

July 13, 2004: Porter Goss and Jane Harman briefed on IG report and legal issues.

July 14, 2004: Associate Deputy Attorney General (?) explains Senate reservation on CAT.

July 15, 2004: Pat Roberts and Jay Rockefeller briefed on IG report and legal issues.

July 16, 2004: Last of replacement drafts of Bybee Memo.

July 17, 2004: Goldsmith moves up resignation date to July 17.

July 20, 2004: CIA requests new legal advice from OLC (13 page letter).

July 22, 2004: Ashcroft confirms to Acting DCI McLaughlin that all techniques except waterboarding legal under CAT. Levin refuses to approve waterboarding without more details.

July 23 ,2004: Bradbury meets with Marhsall Jarrett on Bybee memo, asks him not to pursue investigation.

July 25, 2004: Ghailani captured.

August 4, 2004: Levin and others meet with CTC about waterboarding.

August 6, 2004: Daniel Levin advises that subject to reservations, CIA's use of waterboarding not illegal.

August 9, 2004: OPR asks for more information.

August 31, 2004: OPR receives more information,

including materials from hard drives of those who worked on it.

September 22, 2004: Porter Goss becomes DCI.

Late September, 2004: CIA answers Levin's questions on waterboarding, nudity, water dousing, and sleep deprivation.

October 12, 2004: CIA responds.

October 25, 2004: OPR starts investigation.

November 2004: Steven Kappes resigns; Jose Rodriguez replaces him as Deputy Director of CIA for Operations. Rodriguez is reported to be the person who ordered the terror tapes' destruction.

November 10, 2004: Two page email chain on videotapes and OIG's open investigation.

December 30, 2004: Daniel Levin writes new torture memo (he's the guy who waterboarded himself so he could prove it was torture); it ignores the questions about torture's compliance with the 5th, 8th, and 14th amendments under CAT.

January 2005: Abu Gonzales renounces the Bybee Memo, sort of.

January 15, 2005: CIA sends updated CMS guidelines and comments on January 8 draft of torture memo.

January 25, 2005: Crazy Pete Hoekstra and Jane Harman briefed.

February 2005: Senior CIA official provides incomplete account of CIA treatment of detainees at HPSCI briefing.

February 3, 2005: Gonzales confirmed.

February 4, 2005: Acting Assistant Attorney General of the OLC Daniel Levin writes to DOD General Counsel Haynes reminding him again of both Goldsmith's opinion and Philbin's testimony. He informs Haynes that the March 2003 Yoo memo has been formally withdrawn. That was

his last day at OLC.

February 5 to February 14, 2005: Bradbury acting AAG.

February 9, 2005: EDVA orally declines to prosecute al-Janabi's murder.

February 14, 2005: Gonzales sworn in.

February 22, 2005: EDVA letter declining prosecution of Manadel al-Janabi's murder.

March 2, 2005: Memorandum for Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, from [redacted], DCI Counterterrorist Center, *Re: Effectiveness of the CIA Counterintelligence Interrogation Techniques* created and provided to OLC.

March 6, 2005: NYT reports on extraordinary renditions.

March 7 2005: CIA briefs Roberts and Rockefeller on torture.

March 8, 2005: CIA and Cheney briefs Roberts, Rockefeller, Goss, and Harman on torture.

April 8, 2005: May 10, 2005 Bradbury memos drafted.

April 15, 2005: Fax from [redacted], DCI Counterterrorist Center, *Briefing Notes on the Value of Detainee Reporting* created.

April 20, 2005: DOJ announces Comey's resignation.

April 22, 2005: Moussaoui pleads guilty. Comey meets with AGAG, Philbin, Bradbury.

April 26, 2005: Comey meets with Gonzales

May 2005: Jello Jay Rockefeller writes to CIA IG requesting terror tape investigation materials; he doesn't receive them.

May 10, 2005: DOJ produces two memos allowing CIA to torture. (Techniques, Combined)

May 25, 2005: Flanigan nominated for DAG.

May 30, 2005: DOJ produces another torture memo.

June 1, 2005: Cheney CYA document created.

Summer 2005: Negroponte writes a memo to Porter Goss strongly advising him not to destroy the torture tapes.

June 2005: Senior CIA Officer tells SSCI the CIA does not engage in cruel or inhuman treatment.

June 23, 2005: Bradbury nominated to head OLC.

July 2, 2005: Public Affairs Guidance for High Value Individual Capture permits photographing high value detainees (within guidelines).

July 21, 2005: House passes revised version of PATRIOT Act.

July 28, 2005: CIA's attorney provides "his client" opinion "regarding DNI's position [regarding] the destruction" of the torture tapes.

July 30, 2005: Senate passes revised version of PATRIOT Act.

July 21, 2005: Cheney attempts to persuade McCain and others not to restrict detention policies.

The Bush administration in recent days has been lobbying to block legislation supported by Republican senators that would bar the U.S. military from engaging in "cruel, inhuman or degrading treatment" of detainees, from hiding prisoners from the Red Cross, and from using interrogation methods not authorized by a new Army field manual.

August 1, 2005: 101st Airborne Division Detention SOP states that "detainees will not be photographed, humiliated or placed in positions with sexual overtones." Division General Order Number 1 (not clear if this is part of the SOP or not) prohibits soldiers taking photographs of

detainees unless conducted pursuant to official duties, which include, intelligence gathering and official investigations.” [my emphasis]

August 15, 2005: Comey’s Farewell Address.

October 2005: Bradbury notes in QFR that we abide by Article 16.

October 5, 2005: McCain’s Detainee Treatment Act passes Senate; it prohibits cruel and unusual treatment for all detainees and makes the Army Field Manual the standard for all DOD detainees.

October 7, 2005: Tim Flanigan withdraws from consideration for DAG.

October 18, 2005: Ted Stevens and Thad Cochran briefed on torture; they were two of just 9 Senators who opposed DTA and both had already been named as conferees on bill.

October 20, 2005: The week before the House and Senate meet to resolve the bill, Cheney makes a third attempt to convince McCain not to restrict the use of torture, which McCain again rejects.

October 26, 2005: CIA OIG sends report on Manadel al-Janabi’s death to EDVA.

Late October, 2005: McCain briefed on torture—probably on October 20, 2005 meeting with Goss and Cheney.

October 22, 2005: USCENTCOM Policy Prohibiting Photographing or Filming Detainees ... or Posting Visual Images Depicting Human Casualties prohibits photographing or filming detainees as well as the possession, distribution, transfer or position ... of visual images depicting detainees.” [my emphasis]

October 22, 2005: Paul McNulty—whose ED VA USA Office oversaw Moussaoui prosecution—nominated to be Deputy Attorney General.

October 31, 2005: Bill Frist briefed on torture.

November 1, 2005: Bill Frist briefed on torture.

November 1, 2005: Dana Priest reveals the use of

black sites in Europe. In response, CIA starts moving detainees from the countries in question.

November 3, 2005: Leonie Brinkema inquires whether govt has video or audio tapes of interrogations. CIA IG Report on Manadel al-Janabi's death completed.

November 4, 2005: Member of Congress writes four page letter to CIA IG.

November 7, 2005: Detention Operations at Multinational Corps-Iraq prohibits coalition and Iraqi forces from photographing detainees.

November 8, 2005: CIA requests permission to destroy torture tapes. CIA reaffirms March 2005 statement that all interrogation methods are lawful. Duncan Hunter briefed on torture. Pete Hoekstra briefed on torture.

November 9, 2005: CIA confirms destruction of torture tapes. Doug Jehl article on spring 2004 CIA IG report on interrogation methods appears.

November 10, 2005: CIA attorney sends email to CIA officers discussing torture tape destruction.

November 14, 2005: Govt tells Brinkema it has no audio or video tapes.

November 22, 2005: DOJ brings charges against Padilla, avoiding an imminent hearing on the case before SCOTUS.

November 25, 2005: 3-page email chain providing background information on torture tape destruction.

December 2005: Condi and Hadley states US policy accords with Article 16.

December 13, 2005: The Army approves new Field Manual, which seems to push the limits intended by McCain's amendment.

December 14, 2005: PATRIOT Act reauthorization comes out of conference.

December 16, 2005: Risen and Lichtblau's first

story on the NSA domestic spy program. Cheney provides emergency briefings on program. PATRIOT Act reauthorization defeated in Senate.

December 19, 2005: The House passes the Conference Report on McCain torture bill.

December 20, 2005: The Administration writes document clarifying its policy on photographing detainees.

December 21, 2005: The Senate passes the Conference Report on McCain torture bill.

December 2005: Porter Goss writes memo refusing to torture anymore without a new DOJ approval.

December 22, 2005: House passes one month extension of PATRIOT Act.

December 30, 2005: President Bush signs the Appropriations Bill, issuing a signing statement "interpreting" the McCain amendment.

Christmas break, 2005-2006: Hadley calls Goss to try to get him to back off memo.

April 20, 2006: Mary McCarthy fired from CIA, purportedly for leaking to Dana Priest.

May 4, 2006: Moussaoui sentenced to life in prison.

May 5, 2006: Porter Goss resigns as DCI; General Michael Hayden replaces him.

June 29, 2006: Hamdan v. Rumsfeld rules Article 3 applies to al Qaeda.

Summer 2006: Condi wins argument to move high value detainees to Gitmo.

July 11, 2006: Roberts and Rockefeller briefed on "potential to revive use of the [torture] program."

July 24, 2006: Steven Kappes returns to CIA as Deputy Director.

August 2006: Opinions on Detainee Treatment Act, "interpretation" of Common Article 3, both on confinement.

September 6, 2006: Bush admits to secret detention program for High Value Detainees. All members of SSCI obtain access to CIA IG Report and Bybee II Opinion. Hayden briefs Frist and Reid. Hayden briefs Jane Harman. Hayde briefs full SSCI committee (less Ron Wyden). Hayden briefs full HPSCI (Mike Rogers did not attend second briefing).

September 19, 2006: Bill Young and John Murtha briefed (Murtha not present for torture techniques discussion).

October 6 to 10, 2006: ICRC visits High Value Detainees at Gitmo.

October 17, 2006: The Military Commissions Act signed into law.

November 2006: CIA claims SSCI was informed the Al Qaeda torture tapes were destroyed; SSCI claims it has no records to back that claim.

November 16, 2006: CIA briefs most of SSCI (Roberts, DeWine, Rockefeller, Bayh, Bond, Chambliss, Feingold, Feinstein, Levin, Lott, Mikulski, Warner).

November 16, 2006: CIA briefs HPSCI on torture.

December 4 to 14, 2006: ICRC makes second visit to High Value Detainees.

December 19, 2006: Hayden briefs Silvestre Reyes.

February 9, 2007: Bellinger writes State's objections to torture.

February 14, 2007: ICRC completes report on 14 High Value Detainees.

February 19, 2007: Bradbury letter challenges Bellinger's objections.

March 9, 2007: Padilla attorneys reveal March 2, 2004 tape missing.

March 14, 2007: Hayden briefs HPSCI.

April 12, 2007: CIA briefs ICRC Report on torture to most of SSCI (Rockefeller, Bond,

Levin, Feinstein, Burr, Hatch, Warner, Feingold, Chambliss, Nelson).

May 15, 2007: DoD issues document preservation order for documents relating to Jessen Mitchell.

June 19, 2007: John Rizzo nomination hearing—briefs torture to Rockefeller, Bond, Bayh, Feingold, Feinstein, Levin, Snowe, Warner, Whitehouse, Wyden.

July 2007: EO 13440 interprets Common Article 3. OLC issues legal opinion analyzing torture. Does not include analysis of anti-torture statute but refers to May 2005 opinions. Does not address waterboarding.

July 20, 2007: OLC opinion on enhanced techniques.

August 2, 2007: SSCI hearing on EO 13440, Common Article 3. (Rockefeller, Bond, Chambliss, Feingold, Feinstein, Levin, Mikulski, Nelson, Snowe, Wyden, Warner.

August 29, 2007: OPR first gets copies of Combined and CAT memos.

September 13, 2007: In the course of a different national security matter, CIA discovers interrogation tapes not disclosed during the Moussaoui trial.

September 14, 2007: CIA announces Michael Sulick will return to lead Directorate of Operations.

September 17, 2007: Michael Mukasey, who signed off on a warrant based on the torture testimony of Abu Zubaydah, nominated to be Attorney General.

September 25, 2007: John Rizzo's nomination to be CIA General Counsel withdrawn. Two page email, with attachments, discussing the review and disposition of 3 video tapes.

September 30, 2007: Jose Rodriguez (purported to be the person that ordered the destruction of the tapes) retires.

October 5, 2007: Email between CIA officers

granting approval to destroy tapes.

October 11, 2007: Michael Hayden announces investigation into CIA's IG, John Helgerson. Hayden discusses "number of detainees subjected to" torture with John Murtha.

October 25, 2007: DOJ informs Leonie Brinkema that they've discovered three interrogation tapes.

November 2, 2007: Cheney Counsel Shannen Coffin leaves, with little notice.

November 9, 2007: Bill Nelson briefed on torture.

December 6, 2007: NYT reports that CIA destroyed tapes.

December 11, 2007: Hayden briefs SSCI on torture tapes, reading techniques used on Abu Zubaydah (including waterboarding) during hearing (Feinstein, Wyden, Bauh, Mikulski, Feingold, Nelson, Whitehouse, Levin, Warner, Hagel, Hatch, Snowe, Burr).

December 14, 2007: Michael Mukasey refuses to share information on torture tape inquiry with Congress, citing the need to avoid politicization of investigation (he would later change his mind).

January 2, 2008: Mukasey announces criminal investigation of torture tape destruction.

January 16, 2008: John Rizzo, acting General Counsel for the CIA, testifies before HPSCI about torture tape destruction. Jose Rodriguez refuses to testify without immunity. (Reyes, Eshoo, Hoekstra, Schakowsky, Rogers, Ruppertsberger, Issa, Gallego, Thornberry, Langevin, Cramer, Everett, Boswell, McHugh, Tiahrt, Murphy, Holt.)

January 30, 2008: Mukasey states waterboarding not used.

February 5, 2008: Michael Hayden admits to waterboarding of three detainees at Annual SSCI Threat Assessment briefing. (Feinstein,

Rockefeller, Bayh, Whitehouse, Warner, Hatch, Feingold, Snowe, Chambliss, Nelson, Bond.)

February 14, 2008: HJC OLC oversight hearing. (Jerry Nadler, Trent Franks, Artur Davis, Mel Watt, Bobby Scott, Darrell Issa, John Bradbury, Keith Ellison.)

February 14, 2008: Steven Bradbury admits waterboarding "adapted from SERE."

March 31, 2008: 2003 Yoo Torture Memo declassified.

May 13, 2008: Convening Authority dismisses all charges against al-Qahtani.

May 19, 2008: Administration makes "all" OLC opinions "and other documents" available to SSCI.

December 22, 2008: First draft of OPR report.

April 6: NYRB posts the Red Cross report on high value detainees.

April 8, 2009: Dusty Foggo interviewed in torture tape case.

April 9: CIA Director Leon Panetta bans contractors from conducting interrogations, black sites.

April 16: Obama statement on memo release, torture memos released:

- August 1, 2002: Memo from Jay Bybee, Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA
- May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA ["Techniques"]

- May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA [“Combined”]
- May 30, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA

April 21: Senate Armed Services Committee releases declassified Inquiry into the Treatment of Detainees in US Custody.

April 22: Senate Intelligence Committee releases declassified Narrative Describing the Department of Justice Office of Legal Counsel’s Opinions on the CIA’s Detention and Interrogation Program (Jello Jay’s statement on the release).

April 23: Ali Soufan, FBI interrogator, publishes NYT op-ed describing early interrogation of Abu Zubaydah.

April 23: DOJ announces it will release a number of photos showing detainee abuse that had previously been FOIAed, along with thousands more.

April 24: In ACLU FOIA case, Judge Hellerstein orders a more expansive response on torture tape documents from CIA.

April 24: WaPo releases JPRA memo—which had been circulated among the torture architects—using the word “torture” and warning that torture will beget false information.

May 4, 2009: Yoo submits comments on OPR report.

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

Feinstein described Eateringer'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.

Eateringer 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 Eateringer 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.

BRENNAN CEDES TO FEINSTEIN ON TORTURE TAPE DESTROYER BUT “DEFIANT” ON TORTURE REPORT

The WaPo reports that the woman who helped Jose Rodriguez destroy the torture tapes will not – as had been floated – officially lead the Clandestine Services.

A female CIA officer who was the first woman to lead the agency’s clandestine service, but was also closely tied to the agency’s interrogation program, will not get to keep that job as part of a management shake-up announced Tuesday by CIA Director John O. Brennan, U.S. officials said.

The report (sourced to “US officials,” which can be code for members of Congress or staffers) emphasizes that the intervention of members of Congress – and Dianne Feinstein specifically – played in key role in persuading John Brennan such an appointment would be a problem.

But the woman, who remains under cover, faced opposition from senior lawmakers over her ties to an interrogation program that critics have said employed torture to get information from al-Qaeda captives after the Sept. 11, 2001, attacks.

[snip]

Sen. Dianne Feinstein (D-Calif.), the chairwoman of the Senate Intelligence Committee, had called Brennan to express concern over the possibility that

someone so closely linked to the program would be put in position to lead the agency's spying service.

Kudos to DiFi for what appears to be successful oversight.

The only problem is the same article notes that Brennan is preparing to blow off DiFi's torture report.

The transition comes at a time when the agency is assembling what is said to be a defiant response to a recently completed report by the Senate Intelligence Committee that is sharply critical of the interrogation program and its results.

As I have noted in the past and elaborated on at Salon yesterday, Brennan's "defiance" should not matter. Ultimately, the White House has the authority to release the report.

But it's trying to dodge the issue.

And now, in spite of Panetta's claims that the White House originally made torture a SAP, the White House has done nothing to accelerate the release of a report that – according to Democrats on the committee and John McCain – will correct many misconceptions about the torture program.

Of course, as president, Obama would have the authority to order John Brennan to declassify the report in any case. But the White House seems unwilling to acknowledge whether it possesses the sole authority over this decision. In response to a question whether – as Panetta's statement indicates – the White House has classification authority over the program, NSC spokesperson Caitlin Hayden didn't answer.

Instead, she used the same kind of

stalling technique as the CIA:

The Administration is currently reviewing the full 6,000 page report at the invitation of the SSCI and we look forward to working with the Committee once that review is complete.

I suspect the White House will use Brennan's "defiance" as cover for keeping the report hidden.

What Brennan does in personnel decisions that remain hidden won't get the CIA out of the torture business. Only real transparency on it will.

Update: The Cable published the entire letter announcing the personnel changes at CIA. It ends with this claim about the woman passed over at Clandestine Services.

The assertion she was not chosen because of her affiliation with the CT mission is absolutely not true.

I guess for the CIA, destroying evidence of torture is considered "the [counterterrorism] mission."

DURHAM TORTURE TAPE CASE DIES, US DUPLICITY IN GENEVA & THE PRESS SNOOZES

From the best available information as to the original destruction date of the infamous "Torture Tapes" having been on November 8, 2005, the statute of limitations for charging any general crime by employees and/or agents of the US



Government for said destruction will expire at midnight Monday November 8, 2010 as the general statute of limitation is five years. By operation of law, the statute would have run yesterday were it not a Sunday. So, by the time you are reading this, it is over. Absent something extraordinary, and I mean *really* extraordinary, a criminal statute of limitation is effectively a bar to subject matter jurisdiction and that is that. Ding dong, the John Durham torture tape investigation is thus dead.

Last week, I wrote a letter to the DOJ and saw to it that it was delivered to the main contacts, Dean Boyd and Tracy Schmalzer, as well as John Durham's office. None of them responded. Finally, late Monday afternoon I called Durham's office, and they acknowledged having received the letter. Although extremely cordial, there was simply no meaningful information or discussion to be had on the subject. "We have no comment" was about the size of it. I asked about the remote possibility of the existence of a sealed indictment; there was "no comment" on that either, and there is absolutely no reason in the world to think anything exists in this regard.

Oh, there was one thing; when I asked why there had been no formal response to my letter, I was told perhaps it was a "little edgy". Apparently

actually phrasing an inquiry with legal specificity and facts makes it too “edgy” for the United States Department Of Justice. Who knew? Ironically, at the same time this discussion was transpiring today, the very same Obama DOJ was in US Federal Court, in front of Judge John Bates of the DC District, arguing for their unfettered right to extrajudicially execute an American citizen, and do so in secret without explanation. But my letter asking about the dying Durham investigation was edgy. The DOJ’s priorities, morals and duties seem to be a bit off kilter when it comes to their assignment of the term “edgy”.

Apparently TPM got the same brick wall. The open and shut criminal case against Jose Rodriquez is gone. The clear potential for cases against the four Bush/Cheney White House attorneys involved in the torture tapes destruction, as well as the two CIA junior attorneys, gone. Same for any case against Porter Goss. Gone, and the DOJ has no explanation and nothing to say. At this point, the excuse for not commenting is *not* that there is an ongoing investigation into destruction of tapes, the criminal subject matter of that investigation is gone, outside of the statute of limitations.

But the irony of the DOJ’s position on the Durham investigation does not end with a misplaced sense of what is “edgy”, an even rarer instance of irony played out last Friday in Geneva with the US presentation at the UN Universal Periodic Review. On Friday, November 5th, the US defense to its human rights and torture record was given by Harold Koh, the chief Legal Advisor to the State Department. What did Koh rely on as evidence of US accountability for its now proven torture regime? Why the DOJ John Durham Investigation of course. From AFP:

“I think that the Obama administration defines waterboarding as torture as a matter of law under the convention against torture and as part of our legal

obligation... it's not a policy choice," Koh told journalists after being asked about the report.

Asked whether the United States was still considering investigation or federal prosecution of those who might have ordered such a practice in the past, Koh said the matter was being examined by Special Prosecutor John Durham in Connecticut.

"Those investigations are ongoing. So the question is not whether they would consider it, they're going on right now," he explained.

Yep, the DOJ's John Durham investigation. The very same intrepid arm of justice and accountability that couldn't bring itself to indict up the Jose Rodriguez ham sandwich served up to them on a silver platter on January 2, 2008, nearly three years ago. The same DOJ/John Durham investigation so derelict in duty that it just let the statute of limitations on his original special prosecutor jurisdiction, the criminal destruction of the torture tapes, bleed out on the table in front of him. That certainly ought to be reassuring for the UN UPR, the UN Special Rapporteur, and the other world defenders of human rights.

So, just how inattentive and asleep at the wheel does the government think the American media and citizenry are, to brazenly engage in the simultaneous duplicity of relying on the Durham investigation in Geneva for the UN UPR On Human Rights at the same moment it was using the Durham investigation to bleed out the statute of limitation on the primary jurisdiction of the investigation at home? Well, they think the media and people are completely asleep and, sadly, they are quite correct.

Look at how the New York Times covered the initiation and early stages of the DOJ John Durham criminal investigation into the

destruction of the torture tapes. Here is CBS News, the Wall Street Journal, the Washington Post, Jonathan Turley, the list is endless. At several times since the initiation of the Durham torture tape investigation, there has been wide and excited coverage of leaks that Durham was “wrapping up” or on other aspects leaking out; here is the New York Times, Washington Post, more New York Times, Politico; again, the list is potentially endless. the torture tape investigation of the DOJ and John Durham has had constant coverage by any number of endless media sources until it came time for the expiration of the statute of limitations that effectively terminates the entire original jurisdiction of John Durham. Somehow, the end of the road merited no coverage whatsoever by the ever present American media. None. Nada. Zip.

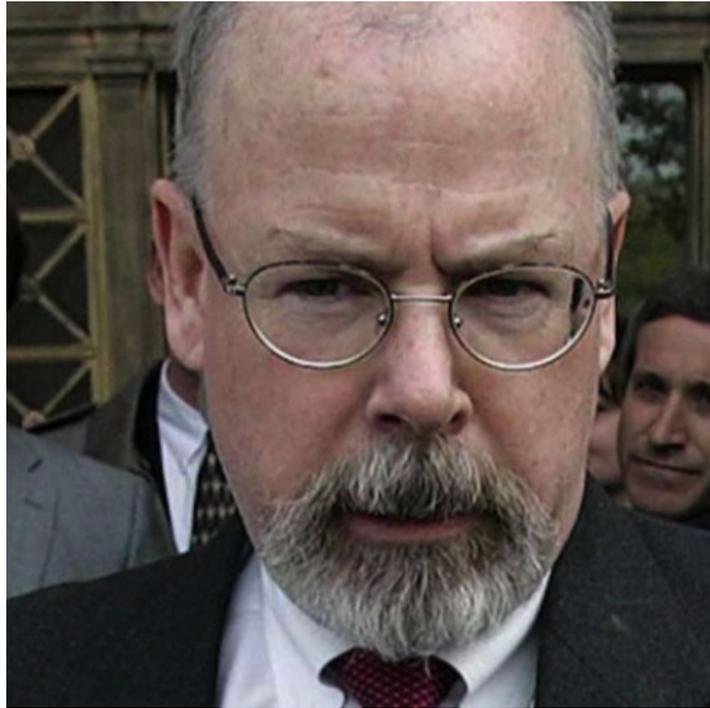
So, where did the American media that has been covering the John Durham torture tape destruction investigation since its inception suddenly go; what hole did they crawl into when the actual statute of limitation, on the base acts for the whole investigation, was expiring? That is a question worth hearing an answer to. It is not that they didn't know, because you can bet they saw the letter last week. Why would the media stand by as the government whistles past the graveyard point of the primary jurisdiction of the John Durham Special Prosecutor jurisdiction?

(Graphic by the one and only Darkblack)

LETTER TO DOJ AND JOHN DURHAM RE: TORTURE TAPE CRIMES

EXPIRING

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ly November of 2005, agents of the United States government destroyed at least ninety two videotapes containing direct evidence of the interrogation and, upon admission and belief, torture of Abu Zubaydah and Abd al-Rahim al-Nashiri (see: [here](#), [here](#), [here](#), [here](#) and [here](#)). The statute of limitations, for the criminal destruction of said taped evidence in the cases of Abu Zubaydah and al-Nashiri will expire on Sunday November 7 (since the last day falls on a weekend, the statute should maintain through the next business day, which is Monday November 8). As we have heard absolutely nothing from Eric Holder, John Durham, the DOJ or the Obama Administration in relation to indictments or other results of the investigation Mr. Durham has been conducting since January 8, 2008, nearly three years, I thought a letter was in order asking just exactly what their status was. Said letter was addressed to Dean Boyd and Tracy Schmaler, official representatives and spokesmen for the Department of Justice, and reads as follows:

Dean and Tracy,

As I believe you are already aware, the statute of limitation on criminal charges including, notably, obstruction of justice for the destruction of evidence, are about to expire. The destruction appears to have occurred on or about November 8, 2005 and there is a five year statute on most all of the general crimes that could possibly be under investigation by John Durham. No competent prosecutor would have waited this long to file charges if he intended to do so, but there are still a couple of days left; what is the status?

Secondly, I would like to point out that should you be thinking about relying on some rhetoric that Mr. Durham simply cannot find any crimes to prosecute and/or that there were no proceedings obstructed, it is intellectually and legally impossible to not consider the tapes to be evidence, and as they almost certainly exhibit torture to some degree and to some part they would almost certainly be exculpatory evidence, in the cases of Abu Zubaydah and al-Nashiri themselves. The United States government continues to detain these individuals and they have charges that will putatively be brought against them in some forum (civil or tribunal), Habeas rights and/or indefinite detention review processes that will occur in the future.

In short, there exist not just the potential, but the necessity, of future proceedings, and agents of, or on behalf of, the United States government have destroyed material, and almost certainly exculpatory, evidence. Crimes have been committed. At a bare root minimum, it is crystal clear Jose Rodriguez has clear criminal liability; there are, without question, others culpable too. What is the status?

If the DOJ does not intend to proceed in any fashion on these clear crimes, please provide me with some intellectually consistent explanation for why the US government is covering up, and refusing to prosecute, the criminal acts of its own employees and agents.

Thank you.

bmaz

emptywheel.com

If there is any worthwhile or meaningful response, I will advise.

CIA STORES THEIR TORTURE TAPE THE SAME PLACE JUDY MILLER DOES!

Remember how Judy Miller stored the notes showing that the Vice President's lackey had leaked Valerie Plame's identity to her under her desk in a shopping bag? Remember how we mocked that kind of record keeping? Well, the AP reports that the CIA uses the same archival system as Judy:

The two videotapes and one audiotape are believed to be the only remaining recordings made within the clandestine prison system.

The tapes depict Binalshibh's interrogation sessions at a Moroccan-run facility the CIA used near Rabat in 2002, several current and former U.S. officials told The Associated Press.

They spoke on the condition of anonymity because the recordings remain a closely guarded secret.

When the CIA destroyed its cache of 92 videos of two other al-Qaida operatives, Abu Zubaydah and Abd al-Nashiri, being waterboarded in 2005, officials believed they had wiped away all of the agency's interrogation footage. But in 2007, a staffer discovered a box tucked under a desk in the CIA's Counterterrorism Center and pulled out the Binalshibh tapes.

I look forward to learning whether this particular box of torture tapes once belonged to Jose Rodriguez, who when the tapes were discovered had just retired as head of Clandestine Services but who was head of CTC when the tapes were made, or whether someone else is a Judy Miller-style packrat.

Now, elsewhere in the AP story they make it clear that—as I have suspected—the tapes first revealed to Leonie Brinkema in 2007 were of Ramzi bin al-Shibh. That's particularly significant because Brinkema had specifically given Zacarias Moussaoui permission to question al-Shibh in January 2003. So when the government told Brinkema they had no tapes (the AP says that since Morocco maintained control of the prison at which al-Shibh was held, CIA claimed it wasn't "part" of the CIA program), they were denying evidence she had permitted to Moussaoui by name.

And this discovery has implications not just for Moussaoui, and for al-Shibh himself (the AP suggests the tapes may show that al-Shibh's mental state declined very quickly after he was taken into custody; he had a pending competence assessment order in military commissions that—when al-Shibh was slotted for civilian trial—was thus negated), but also for Binyam Mohamed.

Mohamed, after all, has long claimed that the worst torture he suffered—the scalpels to his genitals—occurred while in that same Morocco prison in roughly the same time frame (though Mohamed was in Morocco longer). Mohamed made it clear the British were feeding questions to the US to ask while in Morocco (in interrogations, remember, they claim they weren't running). Subsequently, documents showed that a member of MI5 visited Morocco while Mohamed was there. So Mohamed's evidence refutes US claims that they—and their ally the UK—weren't in charge of the interrogations. But at the same time, the videos may provide video evidence of the kind of treatment used in Morocco.

Now, the AP's sources these tapes show "no harsh methods ... like waterboarding."

But current and former U.S. officials say no harsh interrogation methods, like the simulated drowning tactic called waterboarding, were used in Morocco. In the CIA's secret network of undisclosed "black prisons," Morocco was just way station of sorts, a place to hold detainees for a few months at a time.

"The tapes record a guy sitting in a room just answering questions," according to a U.S. official familiar with the program.

But as I noted, al-Shibh would have been in Morocco at the same time that Mohamed was, during which time he was cut and beaten. What are the chances that the Moroccans acting as our proxy treated al-Shibh much differently than they treated Mohamed?

These tapes may well undo at least three of the lies the government told to cover up its torture and its counterterrorism mistakes. If John Durham—who the AP notes has expanded his investigation to include possible obstruction tied to these tapes—does anything with the tapes.

Update: All you timeline aficionados should check out this cool timeline/map of where Ramzi bin al-Shibh was when.

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 Helgeson 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.

BRIEFING CONGRESS AND DESTROYING TORTURE TAPES

As I mentioned in this post, I've been weeding through the documents released under FOIA to Judicial Watch last week. I think they suggest there's a much closer relationship between the CIA misrepresentations on Congressional Briefings and the destruction of the torture tapes than we've known before.

Nancy Pelosi Was Proved Fucking Right

As you might recall, Judicial Watch pursued this FOIA because they thought they were going to catch Nancy Pelosi in a lie.

After the torture memos were released, the torture apologists tried to claim that Congress had been briefed on—and had approved—of torture. But Pelosi pointed out that when CIA briefed her in September 2002, they did not tell her and Goss that CIA had already gotten into the torture business. In spite of the fact that that was completely consistent with Porter Goss' tales of Congressional briefing, the press took Pelosi's story as an accusation that the CIA had lied. So the right wing transparency group Judicial Watch FOIAed the records of Congressional briefings, with a focus on proving that Pelosi had lied about having been briefed about the torture that had already happened.

Perhaps in response to this hullabaloo, the CIA's Inspector General started a review of Congressional—particularly Pelosi—briefings on June 2, 2009. After about six weeks of reviewing their documentation, they came to the following conclusion (starting on PDF 27):

- Pelosi was briefed on April 2002, before CIA started torturing Abu Zubaydah, and in September 2002, in the

briefing under discussion.

- CIA's own records regarding the September 4, 2002 briefing are so erroneous they show Jane Harman, not Pelosi, received the briefing.
- The only CIA record on the content of the September 4, 2002 briefing is the set of cables between Jose Rodriguez, (probably) Jonathan Fredman, and one other CTC person; this is the cable altered after the fact.
- People from the Directorate of Operations, and James Pavitt personally, repeatedly made claims about the content of the Pelosi briefing over the years, yet none of that sourced any first-hand knowledge or documentation.

That is, as is the case with CIA's other briefings on torture, they have no fucking clue what they briefed to Pelosi.

Which leaves Pelosi and Goss' consistent claim that CIA didn't even tell them they had already waterboarded Abu Zubaydah 83 times by the time they briefed them.

Creating the Illusion of Congressional Oversight

But the bigger news, as I pointed out earlier, is that the CIA appears to have been crafting a record of Congressional Briefing in conjunction with their efforts to destroy the torture tapes.

As my earlier post laid out, Jose Rodriguez briefed Pelosi and Goss on September 4, 2002. That was the the day before—according to an October 25, 2002 cable (see PDF 3)—folks at CIA HQ started talking in earnest about the danger of the torture tapes. The following day, the briefers altered their record of the meeting (see PDF 84 and PDF 11-12), though we don't know what the change entailed. No official Memorandum for the Record was ever made of the briefing and there is no record of Stan Moskowitz weighing in on the accuracy of CTC's version of the meeting (though he did receive a BCC of it). In other words, CTC made a record of the briefing at the same time as they were laying a plan to destroy the torture tapes, and CIA deviated from standard policy by not making any other record of the briefing (though not completing MFRs of torture briefings appears to have become a habit).

As a side note, I'm not certain, but I believe Jonathan Fredman is one of the other two people involved—along with Jose Rodriguez—in this. On PDF 7 of this set, the IG investigation into Pelosi's briefings describe the last set of documents in its possession as one that someone turned over to DNI leadership on March 23, 2009. On that date, Jonathan Fredman worked at DNI, making him a likely person to have been asked for his documentation on briefing Congress. The description notes that "he, Director (D)/CTC [Jose Rodriguez]" and someone else did the briefing. PDF 11 of the same set quotes from that email: "On 4 September, D/CTC, C/CTC/LGL, and [redacted] provided notification..." which I believe means Fredman—C/CTC/LGL—was the second of three people in the briefing. PDF 84 of this set shows the actual email. This notes that the third person at the briefing was a CTC/Reports person. If I'm right and Fredman had to turn over his documentation, the notice of the "BCC" to Stan Moskowitz would mean that he wrote the email (because otherwise the BCC wouldn't show up). A later description says someone—whom I believe to be Fredman, given the CTC/LGL return address—showed it to Rodriguez who determined it

to be "short and sweet." In other words, Fredman, one guy on the hook for translating (or mistranslating) DOJ's limits to the torturers in the field, may have been the guy helping Rodriguez to tweak that record of the briefing.

But the alteration of the email on the Pelosi-Goss briefing is not the only temporal tie between the destruction of the tapes and the claims about Congressional briefings. As the exchange of emails from PDF 77-81 makes clear, it took almost a month for the CIA to get around to finalizing a cable describing what happened when they briefed Bob Graham and Richard Shelby on September 27. In an email exchange dated October 24, there was some discussion about what should be included, with one email asking "Why not include the names—we did in the HPSCI cable." It appears that this person wanted Graham, Shelby, and their staffers named by name in the CIA's records (the draft of the cable at that point referred to them only by title, whereas later versions of the cable—see PDF 88—include Graham and Shelby's names, and presumably those of their staffers). This exchange—the effort to tailor the record of Congressional notification—took place the day before CIA HQ tried to authorize the taping over of videotapes each day (see PDF 3).

The pattern of discussion about Congressional briefing continued as CTC kept up its efforts to destroy the torture tapes. Just two days before a meeting with George Tenet about destroying the torture tapes held on January 10, 2003, someone from CTC/LGL (perhaps Jonathan Fredman) forwarded the altered version of the cable recording CTC's version of the Pelosi briefing; the invite to the meeting with Tenet (see PDF 36) directs CTC to put together a report detailing, among other things, CTC's "plan to ensure that both the Hill and NSC will support the decision." (See PDF 104-105) And that email was forwarded again by CTC/LGL on June 27, 2003, between the time CIA's Inspector General had interviewed John McPherson about the contents of the torture tapes on June 18 and when, on July

18, 2003, operatives in the Field asked for instructions to destroy media again (recall that CIA had told Jane Harman they would destroy the torture tapes after the Inspector General concluded its review).

In other words, CTC kept pointing back to that cable—the one they had altered—purportedly recording the September 4, 2002 briefing as they made repeated attempts to destroy the torture tapes.

Crazy Pete's Timely Briefing

Which brings us back to Crazy Pete Hoekstra's role in all of this. As you might recall, Crazy Pete is the guy who set off the witch hunt against Pelosi last year when—in response to widespread horror about the torture memos—he wrote a WSJ op-ed insisting that Congress was briefed on and had approved the torture.

It was not necessary to release details of the enhanced interrogation techniques, because members of Congress from both parties have been fully aware of them since the program began in 2002. We believed it was something that had to be done in the aftermath of the 9/11 terrorist attacks to keep our nation safe. After many long and contentious debates, Congress repeatedly approved and funded this program on a bipartisan basis in both Republican and Democratic Congresses.

[snip]

Members of Congress calling for an investigation of the enhanced interrogation program should remember that such an investigation can't be a selective review of information, or solely focus on the lawyers who wrote the memos, or the low-level employees who carried out this program. I have asked Mr. Blair to provide me with a list of the dates, locations and names of all members of Congress who attended

briefings on enhanced interrogation techniques.

Any investigation must include this information as part of a review of those in Congress and the Bush administration who reviewed and supported this program.

Presumably, when he made this and subsequent claims about who had been briefed, he at least had some basis for the assertion that Democrats and Republicans in Congress had been briefed and had approved of the torture going back to 2002. He wasn't at those early briefings. So where did his (mistaken) certainty come from?

That leads me to a somewhat related question. 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.

The Briefings and John Durham's Investigation

All of which leads me to wonder whether the false claims about CIA's briefing of Congress plays into the investigation of the torture tape destruction.

One thing that suggests there might be a connection between these Congressional briefing issues and the torture tape destruction is the release of documents—for the first time—points to Jose Rodriguez directly. In the same way the last major document dump appears to have been tied to John McPherson's testimony before the grand jury (and therefore seemed to be triggered by events in Durham's investigation), this one seems to be triggered, at least partly, from a willingness on the part of CIA or DOJ to release documents on Jose Rodriguez.

And they name Rodriguez directly, not just by title. I find that particularly odd, because his role in briefing Pelosi has been religiously guarded over the last year, even from reporters with great ties to CIA.

Then there's this other detail. The email and briefing list from November 8, 2005—recording Crazy Pete and Duncan Hunter's briefings—has a Bates stamp in a form that several of the last big torture FOIA documents did, reading 5/12/08 TCG 145226-145228. The Bates number is stamped roughly 12,000 numbers—and 11 days—after the "Timeline Regarding Destruction of Abu Zubaydah Videotapes" (see PDF 38-39). Mind you, I've just guessed that those TCG numbers are a Durham-related Bates, but the date shows an interest from someone in 2008. And it must be an interest in one original copy, since all show the correction regarding Pelosi's briefing (though, curiously, at least three copies of this very document appear in the FOIA set, suggesting it was circulated after the stamp was attached).

None of that is definitive, of course. But the picture of alterations and errors in Congressional briefing, along with the way in which some of those events coincided with others known events in the torture tape destruction, suggests there may be a connection.

CIA CHANGED THE PELOSI BRIEFING DESCRIPTION AFTER DECIDING TO DESTROY TORTURE TAPES

I'm working on some deep weeds for a post later on Monday (hopefully).

But as a preliminary to them, I wanted to point out a minor—but very critical—bit of timing.

As I pointed out in the comments to this thread, someone (I'll show in my new weedy post why it might be then-Counterterrorism Center Legal Counsel Jonathan Fredman) changed the initial description of the briefing that Jose Rodriguez and two others (I believe Fredman was one of the two) gave to Porter Goss and Nancy Pelosi on September 4, 2002. To see the documents showing discussing the alteration (but not the content of it), see PDF 84 of this set and PDF 11-12 of this set.

That's suspicious enough. But as the email discussions of destroying the torture tape show (see PDF 3), the briefing and the alteration to the briefing record happened the day before and the day after—respectively—the day “HQS elements” started talking seriously about destroying the torture tapes.

On 05 September 2002, HQS elements discussed the disposition of the videotapes documenting interrogation sessions with ((Abu Zubaydah)) that are currently being stored at [redacted] with particular consideration to the matters described in Ref A Paras 2 and 3 and Ref B para 4. As reflected in Refs, the retention of these tapes, which is

not/not required by law, represents a serious security risk for [redacted] officers recorded on them, and for all [redacted] officers present and participating in [redacted] operations.

[snip]

Accordingly, the participants determined that the best alternative to eliminate those security and additional risks is to destroy these tapes [redacted]

So here's what this looks like in timeline form:

September 4, 2002: Jose Rodriguez, C/CTC/LGL (probably Fredman) and a CTC Records officer brief Porter Goss and Nancy Pelosi on Abu Zubaydah's treatment. According to both Goss and Pelosi, CIA briefs them on torture techniques, but implies they are hypothetical techniques that might be used in the future, not the past.

September 5, 2002: Unnamed people at CIA HQ discuss destroying the torture tapes, ostensibly because of danger to CIA officers conducting the torture.

September 6, 2002: Someone (possibly Jonathan Fredman or someone else in CTC's Legal department) alters the initial description of the Goss-Pelosi briefing, eliminating one sentence of it. "Short and sweet" Rodriguez responded to the proposed change.

September 9, 2002: CIA records show a scheduled briefing for Bob Graham and Richard Shelby to cover the same materials as briefed in the Goss-Pelosi briefing. The September 9 briefing never happened; Graham and Shelby were eventually briefed on September 27, 2002 (though not by Rodriguez personally).

September 10, 2002: The altered description of the briefing is sent

internally for CTC records. This briefing is never finalized by Office of Congressional Affairs head Stan Moskowitz into a formal Memorandum for the Record.

Or, to put it more plainly, they briefed Pelosi, decided they wanted to destroy the torture tapes (there's no record Pelosi was told about the tapes), and then tweaked the record about what they had said to Pelosi.