

THE AP'S "MOST COMPLETE PUBLISHED ACCOUNT" THAT LEAVES OUT TORTURE

The AP's DOJ and intelligence writers have a story out on the Durham investigation that purports to be "the most complete published account" of the destruction of the torture tapes. Only, it ignores key details that have already been published which paint a much more damning picture of the tapes and their destruction.

First, the news. The AP story does reveal the following new details:

- The name of the guy in Thailand—then station chief Mike Winograd—involved in the destruction of the tapes
- The news that the guy who destroyed the torture tapes—former CTC and Clandestine Services head Jose Rodriguez—is still lurking around Langley as a contractor with Edge Consulting
- The observation that Rodriguez did not include the two CIA lawyers who "approved" the torture tape destruction (Steven Hermes and Robert EATINGER, who have been identified before) on his order to destroy them, which is perceived

within CIA as highly unusual

- The hint that prosecutors may use Sarbanes-Oxley to establish the requirement to keep the tapes as well as the detail that John Durham has prosecuted two of the only half a dozen cases that have used this Sarb-Ox provision
- A list of reasons why all the requests that should have covered the tapes purportedly don't:

_In early May 2003, U.S. District Judge Leonie M. Brinkema told the CIA to reveal whether there were interrogation videos of any witnesses relevant to the case of Zacarias Moussaoui, who was charged as a Sept. 11 conspirator. But that order didn't cover Zubaydah, who Brinkema ruled was immaterial to the Moussaoui case, so the CIA didn't tell the court about his interrogation tape.

_A judge in Washington told the agency to safeguard all evidence related to mistreatment of detainees at Guantanamo Bay. But Zubaydah and al-Nashiri were held overseas at the time, so the agency regarded the order as not applicable to the tapes of their interrogations.

_A judge in New York told the CIA to search its investigative files for records such as the tapes as part of a Freedom of Information Act suit. But the CIA considered the tapes part of its operational files and therefore exempt from FOIA disclosure and did not reveal their existence to the court.

_The Sept. 11 commission asked for broad

ranges of documents, but never issued a formal subpoena that would have required the agency to turn over the tapes.

As such, the story adds valuable insight into the strategies that John Durham may be using to prosecute Jose Rodriguez and others.

But the story buys into certain well-cultivated CIA myths that obscure some other important details of the story:

- The story replicates CIA's favored narrative about why the tapes were made—"to prove that interrogators followed broad new rules Washington had laid out"—and why they were destroyed—to protect the identities of officers involved in the interrogation.
- The story presents Winograd's justification for destroying the tapes—"the inspector general had completed its investigation and McPherson had verified that the cables accurately summarized the tapes"—without any discussion of the fact that McPherson acknowledged evidence of tampering with the tapes during the IG Report and couldn't say whether the techniques reflected the guidance given to the torturers.

- The story ignores all evidence of earlier destruction of evidence and cover-up of criminal acts.
- This claim—"The White House didn't learn about the tapes for a year, and even then, it was somewhat by chance"—is either further evidence of a cover-up or simply false.

Let's start with the primary fiction—that the tapes were designed solely "to prove that interrogators followed broad new rules Washington had laid out." Aside from indications they were used for research purposes about the efficacy of the methods they were using, this claim suffers from a fundamental anachronism. After all, when the taping started on April 13, 2002, Washington had not yet laid out the broad new rules ultimately used to authorize Abu Zubaydah's torture on August 1, 2002. Bruce Jessen didn't even complete his proposed interrogation plan until three days after taping started.

Although, if "Washington" had indeed given Abu Zubaydah's torturers broad rules three and a half months before the Bybee Memo was signed—reports have said that Alberto Gonzales authorized that treatment on a day to day basis—then that by itself would provide an entirely different logic for why the tapes were made and then destroyed (which is sort of the argument Barry Eisler makes in his book *Inside Out*).

That said, we know that already in April 2002, the torturers had exceeded the 24-48 limits on sleep deprivation set by DOJ and NSC. Which sort of blows the whole claim that CIA believed the torturers had remained within established guidelines...

But we also know that CIA not only knew that it had blown by the broad rules it had been given, but that the tapes provided some indication that they had. That's why AP's uncritical acceptance of Winograd's justification is so problematic—it ignores the evidence reported in the IG Report that significant portions of the torture tapes—including two waterboarding sessions—had been altered or destroyed. McPherson, of course, didn't find this earlier destruction of evidence "noteworthy." But he did say, when asked five months after his report on the tapes whether the techniques on them reflected the guidance given to the torture team, that he would have to consult that guidance before he answered.

Now, to be fair, AP is only reporting Winograd's justification for destroying the torture tapes. I'm not challenging that he did say that (indeed, it reflects the publicly available cable traffic). But the AP ought to point out to its readers the wiggle room here. The AP accepts the CIA claim that they made the tapes to make sure the torturers followed the rules set for them in Washington. But then why not point out that their justification for destroying them adopts a different standard—whether the tapes matched the log, rather than whether the tapes matched the guidelines? Why not note that McPherson himself admitted that he hadn't reviewed for the latter standard, and that the IG Report clearly concluded the torture had exceeded the standards laid out for the torturers. Had the AP laid this critical detail out, then it might not be so mystified about why McPherson needed immunity or what his testimony might be able to reveal about the reasons why Jose Rodriguez ordered the tapes destroyed.

Which gets to the earlier evidence of a cover-up. We know—and Jay Bybee has confirmed—that the torturers did not follow the rules laid out for them. Further, there are hints that the tapes might have shown far more severe sleep deprivation than approved in the rules, sleep deprivation the CIA would use to authorize using that amount of sleep deprivation. Add in

the possibility that the torturers used the mock burial that John Yoo would later refuse to approve and subsequently call torture.

There are very clear reasons why the torturers and those in CTC who authorized that torture—starting with Jose Rodriguez—might not want evidence that they exceeded limits on torture lying around in a safe in Thailand. And there are pieces of evidence that suggest the cover-up of what, since it exceeded DOJ guidelines, would be torture by anyone's measure, started in 2002. In addition to McPherson's odd report, there are also the curious details about the briefing record to Congress. Starting with the three day period in which Jose Rodriguez gave Nancy Pelosi and Porter Goss an incomplete briefing, followed the next day by the decision to destroy the tapes, followed the next day by some alteration of the only record of the Pelosi briefing. The Pelosi briefing, similar games with Bob Graham's briefing, and the odd briefing Crazy Pete Hoekstra got the day the torture tapes were destroyed suggest that CIA's briefings were all an attempt to put some legal fig leaf on the destruction of evidence of torture.

But that's not the most important oddity about Congressional briefings on torture and the torture tapes. The AP reports that the White House didn't know of the tapes until May 2004.

That's funny.

If that's true, then what happened at the meeting between CIA and the White House some time before February 22, 2003 regarding how to respond to Jane Harman's letter that—among other things—objected to the destruction of the torture tapes? And why did the CIA go to apparent lengths to share the Pat Roberts briefing with the White House differently than they did the Jane Harman one? Mind you, it is possible that none of these documents show documentary evidence that the CIA consulted with the White House when deciding what to do with Harman's written warning not to destroy the

torture tapes (though, if as it appears, the White House got Pat Roberts' MFR showing his approval to destroy the torture tapes, then the White House did know about the torture tapes). But if the CIA was working so closely with the White House on these briefings—one of three stated intents of which was to get approval to destroy the torture tapes—then the only way the White House didn't know about the tapes is if the CIA very carefully gave the White House plausible deniability.

Which would, itself, provide yet more evidence that CIA knew it was involved in a cover-up.

Here's the bottom line. There is a great deal of evidence that Jose Rodriguez knew as early as September 6, 2002 that he needed to destroy evidence of the torturers exceeding the guidelines set in DC. According to anyone's definition, that means Rodriguez knew years before he had the tapes destroyed he was destroying evidence of torture, even by Jay Bybee's and possibly John Yoo's measure.

Yet the AP—in their “most complete published account”—doesn't even mention that torture?

JOSE RODRIGUEZ BRIEFED PELOSI AND GOSS IN DECEPTIVE ABU ZUBAYDAH BRIEFING

As MadDog noted, Judicial Watch just got some new documents detailing briefings Congress received. Or rather, they got new documents providing further proof that CIA has no fucking clue what it said to Congress during some key briefings (this batch shows, for example, that the fall 2003 briefings were never finalized into a Memo for the Record, just as earlier ones

weren't, and PDF 48 shows that many key briefings weren't recorded).

But in what I've reviewed so far, the new documents reveal one important new detail. Page 44 of this PDF provides a mostly redacted record of the briefing CIA gave Porter Goss and Nancy Pelosi on Abu Zubaydah's torture on September 4, 2002. We know—because both Goss and Pelosi have described this detail the same way—that CIA did not tell the House Intelligence leadership that it had already tortured Abu Zubaydah. CIA told Goss and Pelosi about waterboarding, but spoke of it as a technique that might hypothetically be used in the future, not something that had been used 83 times on one detainee the prior month.

But we haven't known **who** gave that badly deceptive briefing. Mind you, I had my suspicions. I thought it likely that Jose Rodriguez, then head of Counterterrorism Center, and the guy who ordered the torture tapes destroyed three years later, was a likely candidate to have done that briefing. But there was no proof.

Until today.

Assuming CIA's own documentation is accurate (always a big assumption, given the CIA), then Jose Rodriguez—listed as D/CTC—is the one who gave Goss and Pelosi that deceptive briefing.

Jose Rodriguez went on to participate in destroying evidence of torture that should have been briefed to Congress. And these documents prove (again, presuming CIA's documents are accurate) that Jose Rodriguez was deceiving Congress about torture right from the start.

JOHN YOO: STUPID POLITICAL HACK AND CRAVEN ADDINGTON DISCIPLE

If ever there were a doubt that John Yoo was not just a craven lackey for David Addington, but also a stupid political hack, his op-ed today puts that doubt to rest. After whining about how mean the Senate Judiciary Committee was to Robert Bork and Clarence Thomas and John Roberts (!) and Sam Alito, Yoo launches into the kind of fantastic ravings you'd expect from Glenn Beck.

Republicans can also use the filibuster to return the federal government to its proper role in our constitutional system. When Obama chose Sonia Sotomayor for the Supreme Court last year, the jury was still out on the president. It wasn't clear if Obama was a moderate technocrat, as much of the electorate hoped, or if he was a man of the left, as Republicans feared.

That answer is now clear. At home, Obama has launched a broad campaign to redistribute wealth and engineer social change. He and his large congressional majorities enacted a wasteful \$800 billion stimulus, increased the national debt by 50 percent in two years, and nationalized the health-care sector – fully one-sixth of the economy.

On national security, Obama kept to the Bush-Petraeus drawdown schedule for Iraq and reluctantly surged troops to Afghanistan. But he has tried his best to fit the war against al-Qaeda into the box reserved for criminal activities: He promised to shut down Guantanamo Bay, abjured tough questioning tactics, loosed a special prosecutor on CIA

interrogators, announced a civilian trial in New York City for 9/11 plotter Khalid Sheikh Mohammed, and automatically treated al-Qaeda's Christmas Day bomber as a criminal suspect.

[snip]

The GOP will earn public support for its actions, but more important it will be returning the Supreme Court to the original meaning and purpose of the Constitution. The framers wanted the federal government to play a limited role in domestic affairs, and an energetic one to protect the national security against unforeseen emergencies and war. They did not establish a government to redistribute income or impose a socialistic vision of regulated markets. The Constitution's preamble declares its purpose: to "provide for the common defense" and "promote the general welfare," not balance the common defense and promote special interests. If President Obama doesn't send the Senate a nominee who understands those words, the Supreme Court vacancy could be another issue to await the results of the November elections.

John Yoo, apparently, had no problem with the way George Bush redistributed wealth to the very rich with the Wall Street Bailout and huge cuts in the estate tax. And he seems to have missed the news that Obama has embraced the kind of tools of unchecked executive power—including the ability to target American citizens for death with no due process—that John Yoo loves. And how cute that John Yoo now questions the kind of civilian trials that Bush used with Richard Reid and (eventually) Jose Padilla.

But what I'm most amused by is Yoo's critique of Obama's choice to forgo torture (kind of).

[He] abjured tough questioning tactics,
loosed a special prosecutor on CIA
interrogators...

You see, John Yoo has always pretended he neutrally read the law when he wrote his torture memos. He claimed, repeatedly, that he just did the legal analysis and had no stake in the policy decision. He suggested that he didn't care, one way or another, whether Bush and Cheney embraced torture, he was just the lawyer doing analysis in isolation from those policy questions. He further has claimed that he only approved limited torture, not the techniques described by the press (which happen to match what the CIA IG saw on the torture tapes).

But all that, of course, is proven to be bullshit, as John Yoo bases his critique of Obama on the claim that Obama has chosen not to use the illegal tactics that Yoo himself authorized. That's not only an admission—on the part of Yoo—that his claims to political neutrality were all lies. But it's a repudiation of the very expansive claims to executive power that John Yoo holds dear: after all, if the executive has absolute authority to decide how to implement foreign policy, than the disgraced hacks from the past Administration have no business critiquing the exercise of that authority. The unitary executive is not a requirement that the executive always choose the most extreme policy just for shits and giggles, but rather that the executive has the authority to decide what to do, even including choosing less abusive but more effective policies (which is not to say Obama has always taken that approach).

John Yoo was always an embarrassing hack. But for some reason, the upcoming SCOTUS fight has made him reveal his hackery in full splendor.

DICK CHENEY'S COUNTERTERRORISM INCOMPETENCE CONTINUES TO ENDANGER US

When I was out tromping around Yosemite (!!) on Friday, one of Najibullah Zazi's co-conspirators, Zarein Ahmedzay, plead guilty to two terrorism-related charges.

Mark that up as yet another counterterrorism victory for civilian courts.

But it's more than that. As Isikoff and Hosenball emphasize, the government revealed on Friday that Zazi and Ahmedzay received instructions from two top al Qaeda figures—Saleh al-Somali and Rashid Rauf—in 2008. Here's how DOJ reveals the detail in their press release:

As Ahmedzay admitted during today's guilty plea allocution and as reflected in previous government filings and the guilty plea allocution of co-defendant Najibullah Zazi, Ahmedzay, Zazi and a third individual agreed to travel to Afghanistan to join the Taliban and fight against United States and allied forces. In furtherance of their plans, they flew from Newark Liberty International Airport in Newark, N.J., to Peshawar, Pakistan at the end of August 2008. Ahmedzay and the third individual attempted to enter Afghanistan but were turned back at the border and returned to Peshawar.

Within a few days, Ahmedzay, Zazi and the third individual met with an al-Qaeda facilitator in Peshawar and agreed to travel for training in Waziristan. **Upon arriving, they met with two al-Qaeda leaders, but did not learn their**

true identities. As the government represented during today's guilty plea, the leaders were Saleh al-Somali, the head of international operations for al-Qaeda, and Rashid Rauf, a key al-Qaeda operative. The three Americans said that they wanted to fight in Afghanistan, but the al-Qaeda leaders explained that they would be more useful to al-Qaeda and the *jihad* if they returned to New York and conducted attacks there. [my emphasis]

Now, that's interesting for several reasons. Rauf, as you might recall, had a key role in planning the foiled 2006 attempt to use liquid explosives to blow up airliners (potentially using the same TATP Zazi was going to use in his plot). The British were busy conducting a solid law enforcement investigation of the plot and were working with Pakistan to extradite Rauf. But partly in an effort to shore up Bush's crappy poll numbers, Cheney and the guy who ordered the destruction of the torture tapes, Jose Rodriguez, asked the Pakistanis to pick up Rauf before the Brits could finish their investigation. Here's how Ron Suskind described what happened.

NPR: I want to talk just a little about this fascinating episode you describe in the summer of 2006, when President Bush is very anxious about some intelligence briefings that he is getting from the British. What are they telling him?

SUSKIND: In late July of 2006, the British are moving forward on a mission they've been—an investigation they've been at for a year at that point, where they've got a group of "plotters," so-called, in the London area that they've been tracking...Bush gets this briefing at the end of July of 2006, and he's very agitated. When Blair comes at the end of the month, they talk about it and he says, "Look, I want this thing, this trap snapped shut immediately." Blair's

like, "Well, look, be patient here. What we do in Britain"—Blair describes, and this is something well known to Bush—"is we try to be more patient so they move a bit forward. These guys are not going to breathe without us knowing it. We've got them all mapped out so that we can get actual hard evidence, and then prosecute them in public courts of law and get real prosecutions and long prison terms"...

Well, Bush doesn't get the answer he wants, which is "snap the trap shut." **And the reason he wants that is because he's getting all sorts of pressure from Republicans in Congress that his ratings are down. These are the worst ratings for a sitting president at this point in his second term, and they're just wild-eyed about the coming midterm elections. Well, Bush expresses his dissatisfaction to Cheney as to the Blair meeting, and Cheney moves forward.**

NPR: So you got the British saying, "Let's carefully build our case. Let's get more intelligence." Bush wants an arrest and a political win. What does he do?

SUSKIND: Absolutely. What happens is that then, oh, a few days later, the CIA operations chief—which is really a senior guy. He's up there in the one, two, three spots at CIA, guy named **Jose Rodriguez ends up slipping quietly into Islamabad, Pakistan, and he meets secretly with the ISI, which is the Pakistani intelligence service. And suddenly a guy in Pakistan named Rashid Rauf, who's kind of the contact of the British plotters in Pakistan, gets arrested.** This, of course, as anyone could expect, triggers a reaction in London, a lot of scurrying. And the Brits have to run through the night

wild-eyed and basically round up 25 or 30 people. It's quite a frenzy. The British are livid about this. They talk to the Americans. The Americans kind of shrug, "Who knows? You know, ISI picked up Rashid Rauf."

DAVIES: So the British did not even get a heads-up from the United States that this arrest was going to happen?

SUSKIND: Did not get a heads-up. In fact, the whole point was to mislead the British...The British did not know about it, frankly, until I reported it in the book... [my emphasis]

And that, in turn, had two effects. First, it screwed up the British investigation, making it much harder for them to convict the plotters remaining in the UK. In addition, it put Rauf in Pakistani, not British, custody. In 2007, he was allowed to escape, when Pakistani authorities let his uncle, rather than the police, escort him back to prison after a court appearance. And that's why Rauf was free to plan further plots in the UK and, apparently, Zazi's planned attack on the NY Subway.

American authorities claim to have killed Rauf (and Saleh al-Somali) with two separate drone strikes in late 2008. But it remains unclear whether Rauf actually died in that 2008 strike.

So he may still be out there, because Dick Cheney wanted to boost Bush's poll ratings rather than let the Brits develop their case and extradite Rauf into secure custody in 2006.

I've been wondering since Zazi was arrested why the right-wingers don't want to talk about him at all, ignoring the Zazi case to instead squawk about the underwear bomber. I'm beginning to wonder if this is the reason: Dick Cheney's refusal to let law enforcement work four years ago exposed us to at least three more years of Rauf's plotting.

A bunch of NY subway riders may have almost gotten killed last September 11 because Dick Cheney wanted to boost poll numbers in 2006 rather than let law enforcement work.

THE INTERVIEW QUESTIONS

I talked yesterday about one of the puzzling documents in last week's FOIA dump. In this post, I wanted to try to figure out why the most puzzling document—the Interview Questions from PDF 106-108. The document has no date nor any office information—it's just a 3-page list of questions marked Top Secret.

Given how little we have to go on, this is just a wildarsed guess. But I'm guessing the questions were used in CIA Inspector General's review of the torture program while interviewing someone who, while at CTC, had had a supervisory role over the program. And I'm guessing John Durham withheld this document under the law enforcement privilege because he was using these questions to make better sense of the interview report, which presumably is one of the interview reports identified to have ties to the torture tapes, but which remains classified.

At first, I wasn't sure this was a set of questions from the IG Report. But question 24, which asks about a specific EIT used with Rahim al-Nashiri at what must be a third black site, maps onto the IG Report's description of the use of a gun and a drill to threaten al-Nashiri in what, too, must have been al-Nashiri's second black site (because we know the Thai black site closed in December 2002). Significantly, it was a CTC debriefer who made these death threats against al-Nashiri.

In addition to the interview report of John

McPherson (PDF 33-37) there are two or three IG interview reports associated with the torture tapes. The Vaughn Index of hard-copy documents shows an interview report dated February 19, 2003. The interrogation index shows interview reports from February 3 and February 10, 2003. Assuming these are three different interviews, one of the interviews is probably the interview in question. Significantly, we know from a number of Vaughn Index entries that there was some discussion about how to arrange for the IG to review the tapes on February 7, 2003, so it's possible that the interview in question preceded the IG's efforts to go review the tapes.

In any case, the items of interest to John Durham's investigation must be the CTC officer's response to the following two or three questions.

8. What is the background related to the decision to videotape interrogations [redacted]?

9. What are your views regarding whether the tapes should be destroyed?

10. What was the rational [sic] for transferring responsibility from [redacted]?

I'm assuming the answers to those questions—in one of the actual interview reports—is considered too classified to be released in any form.

One more item on this point. Note the document at PDF 95-99, which is clearly someone within the IG office forwarding a trip report from the torture review to the person who originally wrote the trip report. Most of this clearly pertains to the review of the videotape. But the last two paragraphs or so refers to three interviews.

Finally, one more question all this raises. When did the IG decide to review the torture tapes? When did the IG review become the big delay on

destroying the torture tapes? We know it happened before February 5, 2003, when Scott Muller briefed Jane Harman and Porter Goss, because she references the IG review in her letter objecting to their destruction. But the Abu Zubaydah document written some time in January doesn't mention an IG review.

THE ABU ZUBAYDAH DOCUMENT

One of the most curious documents turned over in last week's FOIA dump is the last one, titled "The CIA Interrogation of Abu Zubaydah" (PDF 110-122). While these are just wild guesses, I suspect it may either have been a summary developed for the CIA Inspector General's office for use in its review of the torture program or a summary to prepare Stan Moskowitz, then head of CIA's Office of Congressional Affairs, to brief the Gang of Four in early February 2003.

The Timing

This document must have been written between January 9 and January 28, 2003. On PDF 117, the document describes CIA's Office of General Counsel completing its review of the torture tapes; that report was finalized on January 9. The same page describes the "Guidelines on Interrogation Standards," which was ultimately signed by George Tenet on January 28, as not yet having been approved. The document makes no mention of the Inspector General's plan to review the torture tapes impacting the decision on destroying the torture tapes, that decision was initiated in early February. It also refers to the need to brief Congress on the torture tapes in the future.

The Structure

The document includes a long Top Secret section, followed by a short summary of the document classified Secret. That suggests that the audience of this document might in turn have its own audience with which it could use the Secret summary. So, for example, if the IG were the audience, it might be permitted to use the summary description in its final report. If Gang of Four members were the audience, they might be permitted to keep the Secret summary but not to see the Top Secret report.

The Top Secret section of the document has the following sections (each section has its own classification mark, which shows in the margin, which is how we know where redacted titles appear):

- Abu Zubaydah: Terrorist Activities
- Injuries at Time of Capture
- Highlights from Reporting by Abu Zubaydah
- [Completely redacted section]
- Interrogation Techniques Used on Abu Zubaydah
- [Redacted title and page and a half, though this section includes discussion of videotapes and training, which suggests the section describes the management controls on the torture]
- [Completely redacted section]

The Hand-Written Notes

Curiously, this document showed up in the January 8, 2010 Vaughn Index but not—as best as I can tell—in the November 20, 2009 Vaughn Index (or, if it showed up in the earlier Index, John

Durham had not yet protected it under a law enforcement privilege). That means that the document existed as an electronic document. Yet, as the Vaughn Index tells us, this document has "handwritten marginalia" on it. These are presumably what the redactions are to the right of the main text on PDF 111 and 112. The redactions on PDF 113 are also wider than other sections, suggesting there is marginalia there, too.

In other words, the reader of this document made notes in response to the following claims (in addition to whatever appears in the long redacted section on PDF 113):

- [AZ] was heavily involved in al Qa'ida's operational planning, and had previously been an external liaison and logistics coordinator.
- Abu Zubaydah was provided adequate and appropriate medical care.
- Abu Zubaydah identified Jose Padilla and Binyam Muhammad as al-Qa'ida operatives who had plans to detonate a uranium-topped "dirty bomb" in either Washington DC, or New York City.

The first and third of these claims, of course, are somewhat dubious (though the first is more restrained than the CIA was publicly making at the time). So the reader may have been questioning these claims. And the notation next to the claim about AZ's "adequate" medical care reminds me of the Ron Suskind report that George Bush got enraged when he learned AZ had been given pain killers. In any case, these notations suggest the reader of this document may have had a very high level of information on AZ.

The Contents

Here are notable contents, by section:

Abu Zubaydah: Terrorist Activities

As I said above, the claims made in this section are more restrained than the CIA was making publicly in January 2003. Rather than call AZ the number 3 guy in al Qaeda, it calls him a lieutenant of Osama bin Laden (a claim that is still incorrect, however). The description of AZ as "an external liaison and logistics coordinator," however, is a much more accurate description of AZ's true role than CIA has traditionally given.

Injuries at Time of Capture

The report describes two bullet wounds: one, in his leg. The description of the second is redacted (but I believe this was a gut wound, though it might refer to him losing a testicle, which AZ described in his CSRT). There is a separate bullet point describing another physical issue; I wonder whether this is a description of the lingering effects of his 1992 head wound?

Highlights from Reporting by Abu Zubaydah

There are seven bullet points of information here. Perhaps most telling is the admission that "Over time, he had become more willing to cooperate on many issues." You'd think someone might have questioned whether AZ's cooperation increased as he got further from his torture?

First redacted section

This section would be the logical sequitur between AZ's past interrogation and the techniques used to interrogate him. I wonder whether they discussed either inaccuracies in his information, or described the things he had not yet revealed (such as the location of Osama bin Laden) that they thought he knew? Alternately, it might describe what they had planned for his interrogation going forward.

Interrogation Techniques Used on Abu Zubaydah

By far the most interesting detail in this section is the redaction in the section on which torture techniques they've used on Abu Zubaydah:

The Agency sought and received Department of Justice approval for the following [redacted] enhanced techniques. [Four and a half lines redacted] the waterboard.

What **should** lie behind those redactions are the word "ten" and the names of the techniques approved in the Bybee Two memo. The fact that the passage is redacted must mean that that's not what this passage says—which suggests that this document claimed DOJ had approved techniques they had not actually approved (or, that DOJ approved techniques verbally that were not ultimately approved in the Bybee Two memo). Given that we know this document is one John Durham considered important to his investigation, it may support the notion that some things shown on the videos—perhaps things like mock burial—were one of the things CIA was trying to hide by destroying them.

Also, as I noted earlier, this passage suggests how AZ's sleep deprivation got out of control in the early days. But it doesn't admit how long they did use sleep deprivation with him.

This section makes the ludicrous claim that AZ "is the author of a seminal al Qaida manual on resistance to interrogation methods," presumably referring to the Manchester Manual. (Though AZ would describe "the Encyclopedia" in interrogations in June 2003.)

I find this description of James Mitchell and Bruce Jessen laughable:

Agency employees engaged in the interrogation are complemented by expert personnel who possess extensive experience, gained within the Department of Defense, on the psychological and

physical methods of interrogation (SERE) and the resistance techniques employed as countermeasures to such interrogation. These expert medical personnel were present throughout the interrogations.

I find it curious that this passage makes no mention that Mitchell and Jessen developed the torture program, nor that they were contractors. And I'm amused that they are described as "medical" personnel, as if they had any concerns for AZ's medical condition.

I find it really telling that this passage boasts of having done medical examinations before and during the torture, but not psychological evaluations before and after.

Medical evaluations were conducted on Abu Zubaydah before and during the interrogations. In addition, a psychological profile was conducted on him before the interrogation began.

You'd think someone at CIA would order up a psychological evaluation after all this torture, huh? But what this passage seems designed to do, instead, is spin the medical monitoring that was part of the experimental side of AZ's torture as good medical care (which is also what the description of Mitchell and Jessen as "medical personnel" seems designed to do).

Which may be what the following section is designed to do, too:

It is not and has never been the Agency's intent to permit Abu Zubaydah to die in the course of interrogation and appropriately trained medical personnel have been on-site in the event an emergency medical situation arises.

Let's unpack this. First, the denial that the Agency ever intended to let AZ die suggests

perhaps the denial itself is untrue. I'm curious why this passage describes these personnel as "appropriately trained medical personnel" and not something like "doctor," "nurse," or "medic"? Is it a way to try to explain away the presence of people collecting medical research information, to suggest that they had to have that kind of training? And the reference to "an emergency medical situation," when we know that they had real concerns about AZ's injuries and were closely tracking whether torture caused severe pain, is just cynical. The whole passage is one of the creepiest in the entire document!

This section describes the terms of approval for torture from DOJ. But it never once mentions the Bybee memos (perhaps because it might lead someone to discover that the ten techniques in the Bybee Two memo don't match the techniques listed in this section)?

Finally, look at how underwhelming this claim about the effectiveness of torture is:

The use of enhanced interrogation techniques proved productive; Abu Zubaydah provided additional useful information.

It's telling, too, that they make this claim in an entirely different section from where they boast of all the good intelligence AZ provided. They chose not to tie the specific pieces of intelligence he gave to the techniques use.

Redacted title—probably on management controls on interrogation

As I said, the title of the section that includes the videotapes and training is redacted, along with three primary and two secondary bullet points (which span a page and a half) before the videotape section, and two more after the training section (which take up another half page). I'm wondering if this redacted section talks about the reporting from the Field to HQ?

The section on videotapes makes a claim that—from what we see of the McPherson interview report—appears to be false.

The attorney concluded that the cable traffic did in fact accurately describe the interrogation methods employed and that the methods conformed to the applicable legal and policy guidance.

At the time of his interview, it appears that McPherson said he'd have to review the guidance again before he could say whether the torture portrayed in the videotapes matched the guidance (which, the IG team concluded, it did not). And here's how this document describes the state of the discussion on destroying the torture tapes.

After his review, the General Counsel advised the DCI that OGC had no objection to the destruction of the videotapes, but strongly recommended that the new leadership of the committees first be notified about the existence of the tapes and the reasons why the Agency has decided to destroy them.

Boy, I guess Jane Harman really screwed up their plans when she objected, in writing, to the destruction of the tapes? This passage is one of the things that makes me wonder whether this document wasn't written to fill in Stan Moskowitz before he briefed Congress; though I'm inclined to think CIA wouldn't give the Gang of Four this much information, even though it is very deceptive in parts.

The Summary

The Secret Summary section covers the following four areas:

- AZ's nationality
- His role in AQ (again using the "external liaison and

logistics coordinator”
language)

- The intelligence he gave
- His physical condition

Of note, the intelligence section includes this language, which is either redacted or not present in the Top Secret description of the intelligence he gave.

[AZ] has provided information on Al
Qa’ida’s CBRN program and on individuals
associated with that program.

Also compare how the Top Secret report refers to
AZ’s intelligence on Padilla and Binyam Mohamed...

Abu Zubaydah identified Jose Padilla and
Binyam Muhammad as al-Qa’ida operatives
who had plans to detonate a uranium-
topped “dirty bomb” in either
Washington, DC, or New York City. Both
have been captured.

...to how the Secret summary refers to it:

Information from AZ was instrumental in
the capture near Chicago of Jose
Padilla, a “dirty bomb” plotter,
explosives expert, and terrorist trainer
at Qandahar.

Other Details

I’m interested, then, in what this says about
Durham’s investigation. Obviously, it provides a
great snapshot of what CIA claimed it believed
at the time it first planned to destroy the
torture tapes. It may show CIA claiming it had
approval for torture techniques it did not have
approval for. Oddly, the document doesn’t appear
to explain why the tapes were first made—it
appears that the first mention of them comes in
the description of McPherson’s review.

This document has three sets of Bates stamps on

it: the five-number series, the six-number series, and the IG series from 2007. So it has been reviewed several times in a legal context.

WHO IS LYING? THE TORTURERS? OR JOHN YOO?

One of the potential bombshells in last week's FOIA dump appears in a CIA discussion about a potential statement in response to NYT's breaking of the torture tape story (PDF 86). The document notes that the videotapes would have shown the sheer number of times the torturers waterboarded Abu Zubaydah, and suggests that that may have presented legal problems. The document continues that someone (it appears to be the torturers) informed DOJ of the real number of times they waterboarded AZ, but CIA had no proof.

Jay Bybee's 1 Aug 2002 memo to John Rizzo stated, in part, "Moreover, you have also informed us that although some of these techniques may be used with more than once, that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions." (p. 2) and again, "You have indicated that these acts will not be used with substantial repetition, so that there is no possibility that severe physical pain could arise from such repetition." (p.11). The OIG review determined that Abu Zubaydah was subjected to [redaction] waterboard sessions, consisting of at least 83 separate exposures [half line redacted] assured us that he gave regular updates to DoJ (i.e., John Yoo [few words redacted] at OLC) during this time

frame, and DoJ was aware of the real numbers, but we were never able to verify this with DoJ, as INV management at the time elected not to interview witnesses outside the building. In addition to the disparity in numbers, the method of water application as recorded in the tapes was at odds with the Bybee opinion. [my emphasis]

That is, one problem with the videotapes is that, unless the torturers really did inform Yoo (and, I'm guessing, Jennifer Koester) about how and how many times they really used waterboarding then they would have been in violation of guidelines from DOJ.

The statement, by itself, is inflammatory enough. But particularly in light of what Yoo said to OPR in interviews conducted during the summer of 2005.

He told us during his interview: "I had actually thought that we prohibited waterboarding. I didn't recollect that we had actually said that you could do it." He added:

[T]he waterboarding as it's described in that memo, is very different than the waterboarding that was described in the press. And when I read the description in the press of what waterboarding is, I was like, oh, well, obviously that would be prohibited by the statute.

Now, granted, Yoo is not addressing the number of repetitions of waterboardings. And he points to the depiction of waterboarding in the press, not the depictions of waterboarding that appeared in the CIA IG Report (which, as it happens, matches the descriptions in the press with regards to volume of water and forced ingestion of it). So Yoo, as is his wont, has left some wiggle room here.

But he seems to suggest surprise that he had actually authorized the use of waterboarding.

As implausible as that is, assuming he simply forgot the phone call he made to John Rizzo on July 26, 2002 personally authorizing waterboarding and then forgot reviewing the extensive descriptions Koester wrote into the Bybee Two memo, it strains credulity if Yoo was actually receiving updates from Thailand. Imagine how such an exchange might play out:

“Oh, by the way, John. We set a new record for ‘pours’ during one waterboard session! We drowned that motherfucker 27 times in today’s session!”

“Wha—What? I thought we told you not to use that medieval torture technique!”

John Yoo was playing (or actually was) dumb about the use of waterboarding in the months before CIA destroyed the torture tapes. Yet someone—perhaps Bruce Jessen or James Mitchell—claim they kept DOJ generally and Yoo specifically in the loop of what they were doing.

Someone is not telling the truth. Who is it?

THE TIMELINE OF TORTURE TAPE DESTRUCTION IN JOHN DURHAM’S DOCUMENTS

As I said the other day, most of the documents we received the other day are the 13 or so documents that CIA had cleared for FOIA release, but over which John Durham had declared a law enforcement privilege. This chart compares what we got with what had been declared in Vaughn

Indices in November (this showed the hard copy documents explaining the destruction of the torture tapes) and January (this showed the electronic documents discussing the destruction of the torture tapes; there are 6 files total to this index). While this doesn't show us everything John Durham is looking at (presumably, there are a number of documents that are too sensitive to release), looking at the documents from this perspective gives us a sense of what Durham is investigating.

As you'll see from the chart, I have numbered the documents from 1 to 27. I just assigned them in the order the documents appear in the complete PDF file. I'll also refer to the PDF number for each document.

The Documents Not on Durham's List

First, assuming I matched the documents up to the Vaughn descriptions properly, there are four documents that were not on Durham's list:

- Document 9, January 9, 2003, Review of Interrogation Videotapes (PDF 24-28)
- Document 11, June 18, 2003, Interview Report (PDF 33-37)
- Document 22, December 3, 2007, Potential Statement (PDF 86-93)
- Document 23, December 10, 2007, Trip Report (PDF 95-99)

I believe these documents all did appear elsewhere in the earlier FOIAs on this (I'm going to try to find the Vaughn descriptions later), but presumably CIA had earlier said it could not release them, which meant it was that decision, rather than Durham's determination, that had prevented their earlier release.

Most of these documents (except the questions) pertain to the CIA Office of General Counsel

review of the torture tape, and the Inspector General's subsequent discovery that the original review had neglected to mention key details about blank tapes and discrepancies between what was portrayed in the video and what OLC authorized. Curiously, their release seems to be tied to the events reported by the WaPo, in which John McPherson, reportedly the lawyer who conducted that review, was given immunity to testify before the grand jury in the last month or so. In other words, now that McPherson has testified about this stuff, CIA has decided to release the details of his review publicly. I have included the documents in the timeline below.

Update: I've added in some of the dates reflected in the Vaughn Indices that I think flesh out this timeline. Those dates will not be bolded.

The Chronology on the Tapes

Many of the rest of these documents pertain to the correspondence regarding videotapes. The chronology they show is:

April 13, 2002: Interrogators start videotaping interrogations.

April 17, 2002: Two page Top Secret cable providing guidance on the retention of video tapes.

April 27, 2002: A letter directing the tapes "should all be catalogued and made into official record copies" and asking when they would "arrive here." (Document 1; PDF 1)

May 6, 2002: Someone sends a cable providing guidance to "please do not tape over or edit videos of Abu Zubaydah's interrogations" and "please preserve all videos." Note, we don't get the original copy of this, but it appears in an email forwarding the cable to Scott Muller and John Rizzo in January 2003. (Document 10; PDF)

September 5, 2002: According to October 25, 2002 cable (see below), "HQS elements discussed the

disposition of the videotapes" and determined that "the continued retention of these tapes ... represents a serious security risk." (Documents 2 and 3; PDF 3-7)

September 6, 2002: Two emails: A five-page email between CIA attorneys regarding a draft of a cable discussing the disposition of the video tapes, and a one-page email between CIA attorneys on the revisions of a draft cable regarding the disposition of the video tapes.

October 25, 2002: Cable directing field to tape over tapes each day and promising someone will deploy to assist in destroying the existing tapes. (Document 2, Document 3; PDF 3-7)

October 27, 2002: Some excerpts the October 25 cable and another one (which is entirely redacted) into a one-page summary. Note that both prior cables were classified Secret, but this summary is classified Top Secret. (Document 4; PDF 9)

November 28, 2002: It appears this cable was included among those collected in Document 12 some time after the tape destruction. But what we got in FOIA cuts off the cable (and entirely redacts what is there). (PDF 39-50) Note that the November 11, 2009 Vaughn Index described document 12 as a 13 page document, but we've only got 12 pages.

November 30, 2003: John McPherson reviews the torture tapes. This is noted in an undated timeline of the facts surrounding the torture tape destruction. (Document 25; PDF 103-104)

December 1, 2002: A two-page email that discusses the notes of a CIA attorney.

December 3, 2002: After McPherson reviewed the videotapes on November 30, someone sent out a cable stating that it was a mistake to move the videotapes, and ordering that "no tapes will be destroyed until specific authorization is sent." Documents 5, 6, and 7 all appear to be identical copies of this cable, save for routing information that is redacted; the routing on

Document 6 is very long. (PDF 11-18)

December 3, 2002: A one-page email outlining the destruction plan for video tapes.

December 9, 2002: Someone sends a cable referring to McPherson's review of the videotapes, as well as an inventory conducted on December 3, 2002. The inventory matches this inventory, though Friday's version does not redact the description of Tape 88 as "no video but there is sound" nor the description "begin other materials." Also note the appearance of "H20" below number 75. We don't get the original of this cable, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12; PDF 39-50)

December 20, 2002: A two-page memo from the CIA General Counsel to the Director of Central Intelligence discussing the disposition of the videotapes.

December 20, 2002: At a time when CIA is discussing what to do with the videotapes (there are emails between the Office of General Counsel and Tenet on December 20 and December 26 noted elsewhere in the Vaughn index), someone from Counterterrorism Center (probably their legal department) forwards the October 25 cable to someone else, perhaps to explain why the officers in the field had started taping over tapes on a daily basis. (Document 8; PDF 20-22)

December 20, 2002: Draft/outline of leaks memo, requesting formatting of an attached three page memo.

December 23, 2002: Two-page email with draft language for a memo on disposition of video tapes.

December 23, 2002: One page email described as "first cut at Memo on disposition of AZ videotapes," drafted by CIA OGC.

December 24, 2002: One-page email receipt of a copy of a memorandum and the writing of a cover

memorandum regarding the interrogation video tapes.

December 24, 2002: Change to first draft memo on disposition of AZ videotapes.

December 26, 2002: A three-page memo and one-page cover sheet from the CIA General Counsel to the Director of Central Intelligence discussing proposed options for disposition of the tapes.

January 2, 2003: Someone requests HQS decision regarding videotapes. We don't get this cable, but it is noted in Document 12. (PDF-39-50)

January 9, 2003: John McPherson completes his memo on his review of the tapes. (Document 9; PDF 24-28)

January 10, 2003: A meeting to discuss the disposition of the torture tapes. For a variety of reasons, I believe this to be written by George Tenet's Chief of Staff, John Moseman. The note requests CTC to write a paper explaining the reasons to destroy the tapes. (Document 24; PDF 101)

January 12, 2003: A one-page Top Secret email asking what actions will make the video tapes an official record. A one-page email proposing how to reference the video tape for a briefing. A two-page email informing and reminding CIA officers of the question, what actions make the video tapes an official record.

January 13, 2003: Someone forwards Scott Muller and John Rizzo and others "early background on videotapes." The subject line says four cables are included, but only one appears here, the one sent on May 6, 2002 described above. (Document 10; PDF 30-31)

January 2003: Document 27 (PDF 110-122) appears to have been written before January 28, 2003 because it refers to the "Guidelines" that were finalized on January 28 as still being coordinated by CTC. The document summarizes Abu Zubaydah's treatment up to that point and speaks of his status in the present tense. I'll do a

separate post on this, but the document may have been part of CIA efforts in January 2003 to justify destroying the torture tapes. It gives some background on him, lists the intelligence he has given, lists the techniques used on him (though, curiously, the description of the techniques is redacted), describes the videotapes and OGC's review of them, and describes the efforts to fix the torture program. In addition, there are two extensive redacted sections. Most curiously, there is a one-page passage, classified "Secret" (the rest of the document is classified "Top Secret") that summarizes who AZ was claimed to be, intelligence he provided, and his injuries. I suspect the entire document was used to brief Congress during their February 4 and 5 briefings, and the Secret summary was what the members of Congress were allowed to take away—though that's just a wild guess.

June 18, 2003: Someone from CIA Inspector General's office interviewed John McPherson. The report makes clear that McPherson did not think the videotapes that had been taped over were "noteworthy." The report also suggests that McPherson had not compared the videotape content with guidance sent to the interrogators to see if it matched. McPherson appears to have said he was not under any pressure to ignore those aspects of the videotapes. (PDF 33-37)

July 13, 2003: A cable from the field asking for instructions for disposition of hard drives and magnetic media. Note, we don't have the original document, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12; PDF 39-50)

August 3, 2003: Someone sends a cable to the field directing someone to maintain control of all magnetic media (but not the videotapes in someone's possession), and forward the inventory document for it to someone. We don't get the original of this cable, but it appears someone pulled it up from the files some time after the

tape destruction in November 2005. (Document 12; PDF 39-50)

August 4, 2003: Someone sends a cable asking for "a cable from the Inspector General authorizing ref action." We don't get the original of this cable, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12, PDF 39-50)

April 1, 2004: A completely redacted event that appears in the undated timeline summarizing the key events surrounding the torture tape destruction. (Document 25; PDF 103-104)

April 12, 2004: A two page email discussing what actions would make the tape an official record.

May 11, 2004: David Addington and Alberto Gonzales tell Scott Muller not to destroy the torture tapes. This is noted in an undated timeline of the torture tape destruction. (Document 25; PDF 103-104)

November 10, 2004: Two page email chain on the video tapes and OIG's open investigation, described as "Memo w/OIG comment on tape disposition."

July 28, 2005: A one-page email with a CIA attorney's opinion, conveyed to his client, regarding the DNI's position [on] the destruction of the videotapes.

November 4, 2005: The timeline event reads: "At ODDO request, [redacted]CTC[redacted] drafts language to be included in a cable from [redacted] requesting DD0 approval to destroy the tapes. [Redacted]CTC[redacted] sends the language to [redacted] and the ODDO front office, as well as OGC for approval. The plan was for [redacted] to cut and paste the text into a cable and send it to HQs for approval." (Document 25; PDF 103-104)

November 5, 2005: The timeline event reads: "[Redacted] sends cable requesting approval to destroy the tapes." (Document 25; PDF 103-104)

November 8, 2005: A cable claiming the IG no

longer needed the videotapes and OGC had determined they "accurately documented [redacted] activities on video tape" requests approval to destroy the videotapes. Documents 13, 15, and 16 all appear to be identical copies of this cable though with different routing information and (for Document 15) a different typeface. (PDF 52, 57, 59) Note, the timeline suggests this cable was sent on November 5, not November 8. (Document 25; PDF 103-104)

November 8, 2005: A cable granting permission to destroy the tapes. (Document 14, PDF 54-55) The timeline makes it clear that DDO-Jose Rodriguez-authorized the tape destruction. (Document 25; PDF 103-104)

November 9, 2005: The field informs HQ that it has destroyed the videotapes and within a minute of receipt of that cable-at 5:19 AM-someone forwards the cable to someone else. Note, we have both the original cable (Document 18; PDF 64) and the forwarded cable (Document 17; PDF 61-62)

November 10, 2005: The timeline on the tape destruction shows the following three events (Document 25; PDF 103-104):

[Redacted]CTC[redacted] sends a note to [redacted] saying he has gotten [redacted] concurrence on the language for the cable. He also says that he understands [redacted] is going to call [redacted] with the language for the cable rather than email it to him.

[Redacted] receives the note and replies that the exchange with [redacted] has already taken place. He phoned the language to [redacted] sent the cable. He notes that DDO already approved the destruction of the tapes.

AGC learns that the tapes were destroyed and contacts DCIA Chief of Staff. AGC notes that DNI and Harriet Miers as recently as a few months ago opposed the idea of destroying the tapes. He states

they need to be notified of the destruction as well as others.

Also on November 10, 2005, someone sends two cables with the subject line "Short backgrounder" to Dusty Foggo, first saying everything on the tape destruction made sense (though John Rizzo was upset), then noting that the approvals had not been as originally represented. (Document 20; PDF 81-82)

November 25, 2005: The November Vaughn (but not the January one) describes a 3 email chain with the subject line "short backgrounder" with a November 25 date. This suggests that the two emails sent on November 10 (Document 20) were actually part of a 3-email chain, the last email of which was written on November 25. Note that since the November Vaughn was hard copy documents and the January one electronic copy documents, there may not be an electronic copy of this email chain.

September 25, 2007: Someone sends another person the information for the email authorizing the tape destruction, as if asking for help doing a search. (Document 21; PDF 84)

October 5, 2007: Someone forwards the September 25 email, as if asking someone else for help searching for the email. (Document 21; PDF 84)

December 3, 2007: This appears to have been a request for a statement for the NYT, which broke the story of the torture tape destruction the following day. It begins by laying out the problem we've identified with the tapes—that they showed that interrogators had used waterboarding more times and differently than they had been directed to. 7 pages of this document remain totally redacted (suggesting that the problems with the tapes were not just what they portrayed). (Document 22; PDF 86-93)

December 10, 2007: This appears to be someone sending the IG, internally, the summary of a trip taken during the IG Review of the interrogation program. This may have been the

May 2003 trip when IG reviewed the tapes themselves, though the report also seems to discuss interviews. Note, the forwarding email says the summary table—which appears to summarize all Abu Zubaydah’s waterboard applications—“was subsequently refined.” (Document 23; PDF 95-99)

December 20, 2007: Some pulls the three cable sequence on tape destruction (perhaps for the IG?), as well as a document dated August 19, 2003. The November Vaughn suggests the August 19, 2003 document discusses an “unrelated counter-terrorism operation.” (Document 19; PDF 66-79)

DID THE WHITE HOUSE REVIEW CIA’S RECORDS ON CONGRESSIONAL BRIEFINGS?

A month ago, I wrote a post noting that CIA had never finished its Memos for the Record of several key Congressional briefings. But as I’ve been reviewing old Vaughn Indices to get a better sense of what we received yesterday, I’ve seen some details that raise new questions about CIA’s use of Congressional briefings.

That post from last month was based on this FOIA dump, including a collection of materials on whether or not Congress was briefed on the tapes. Those materials include:

- A 2-page MFR of Pat Roberts’ February, 4 2003 briefing on torture and the tapes printed out on November 19, 2008. It noted that Roberts

named “10 reasons right off” for Congress not to exercise any oversight over torture. It also recorded these details about what CIA told Roberts about the torture tapes:

[Deputy Director of Operations Jim] Pavitt and [CIA General Counsel Scott] Muller described the circumstances surrounding the existence of tapes of the Zubayda debriefing, the inspection of those tapes by OGC lawyers, the comparison of the tapes with the cables describing the same interrogations. **According to Muller, the match was perfect and the lawyer who did the review was satisfied that the interrogations were carried out in full accordance with the guidance.** Muller indicated that it was our intention to destroy these tapes, which were created in any case as but an aide to the interrogations, as soon as the Inspector General had completed his report. (In a subsequent briefing to Congressmen Goss and Harman, Muller said that the interrogators themselves were greatly concerned that the tapes might leak one day and put themselves and their families at risk.) Senator Roberts listened carefully and gave his assent. [my emphasis]

- A two-page MFR by Office of Congressional Affairs head Stanley Moskowitz prepared on July 11, 2004, presumably in advance of the 2004 Congressional briefings on (among other things) the IG

Report. It lists 4 relevant briefings (the February 4, 2003 briefing for Roberts; the February 5, 2003 briefing for Goss and Harman; the September 4, 2003 briefing for Goss and Harman; the September 4, 2003 briefing for Roberts and Rockefeller). Moskowitz attached the February 4, 2003 Roberts briefing to that memo, noting that "the remainder of the sessions are being finalized."

- A one-page MFR for the February 5, 2003 Goss and Harman briefing printed out on April 27, 2009 (so not long before CIA released its torture briefing list on May 7, 2009). The MFR states, "Pls see attached notes." It also records that the "MFR never completed. Closed in FELIX 10/3/07 by OCA IM0."
- An earlier version of that same one-page MFR of the February 5, 2003 Goss and Harman briefing. The print date on it is not shown, though it shows no record of being closed out and/or never completed. There is a post-it on the document labeling it for the "AZ FILE."

- A stub noting that “Pages 3-5 withheld in full,” which suggests the two previous pages—the two copies of the Goss and Harman MFRs—were considered part of a package with these withheld pages. This suggests these withheld pages may be the actual notes from the briefing.
- A one-page list (in proportional font, so probably from a different office than OCA) listing “SENSITIVE BRIEFINGS TO OVERSIGHT MEMBERS FROM FEBRUARY 2003-JULY 2004.” It lists the February 5, 2003 briefing first, following by the February 4, 2003 Roberts briefing. It **makes no mention** of the September 4, 2003 briefings of the Gang of Four. It lists a January 28, 2004 briefing of Goss and Harman (the document redacts the description of whether or not EITs were discussed, though since this briefing doesn’t appear on CIA’s most recent torture briefing list, presumably EITs weren’t discussed). And it lists the July 15, 2004 briefing of Roberts and Rockefeller, but not the July 13, 2004 briefing of

Goss and Harman covering the same topics.

- A second copy of the July 11, 2004 MFR described above. It seems to be an exact copy, down to the staple holes. The only difference in the presentation I can see is a difference in redaction of one of the staffer's names, which may be significant since one of the staffers present, Michael Sheehy, is reported to have briefed Pelosi on the briefing (though the Moskowitz MFR only notes the presence of two staffers, not the three recorded in the CIA's most recent list).
- A one-page table listing "Congressional Assent" to the destruction of the torture tapes. It includes: a December 19, 2002 General Counsel email apparently recording "no objection" from the Inspector General to destroying the tapes; Jane Harman's February 10, 2003 letter objecting to such a plan; the MFR of the February 4, 2003 Roberts briefing assenting to the torture tape destruction; note of the mention in the

Roberts MFR that the torture tapes were briefed to Goss and Harman in their briefing; affirmation that the tapes were mentioned in the handwritten notes of the Goss and Harman briefing, with a note showing that Hoekstra may never have been briefed on the issue. The mention of Hoekstra shows this document had to have been made after 2005. It appears to have been printed on August 12, 2008, and includes a Bates stamp (suggesting it has been used in some kind of investigation or discovery).

Now, all of that's a muddle. But that's precisely the point. CIA appears to have had no consistent record-keeping with regards to Congressional briefings. The problems seem particularly acute when it pertains to that February 2003 briefing of Goss and Harman.

Which is why I'm so curious about the way the MFRs from February 2003 are described in this Vaughn Index as documents 155 to 157 (document 164 may be the chart described in the final bullet point above).

Document 155, SSCI Member Briefing, 2 pages: This document is a two-page **draft** MFR recounting a briefing of SSCI members and staff regarding the CIA's RDI program. ... **The document also contains predecisional information transmitted to presidential advisors and used as part of the President's and the CIA's decision-making process.**

Document 156, SSCI Member Briefing, 4 pages: This document **contains two MFRs** discussing a CIA briefing regarding the RDI program. The document contains information **transmitted to presidential advisors in furtherance of the President's decision making process.** ... The document also contains Congressional equities that require coordination with Congress before a final release determination can be determined.

Document 157, HPSCI Member Briefing, 8 pages: This document is an eight-page MFR including three page of handwritten notes discussing a briefing regarding the CIA's RDI program. ... This document also contains Congressional equities that require coordination with Congress before a final release determination can be reached.

Document 158, HPSCI Member Briefing, 4 pages: This document is a **draft** Memorandum for the Record, with three pages of handwritten notes, discussing a briefing regarding the CIA's RDI program. ... **The document also contains predecisional information used as part of the CIA's decision-making process.** [my emphasis]

See, the muddle gets even worse. Most noticeably, CIA says the MFR describing the Roberts briefing—but not the Goss and Harman briefing—was transmitted to Presidential advisors. In fact, they appear to have sent two MFRs in document 156, though both appear to relate only to the Roberts briefing.

By comparison, they say the Goss and Harman briefing was only used as part of CIA's decision-making, not the White House's.

Which is all the more weird, considering we know CIA met with the White House later in February to strategize how to respond to Jane Harman's

letter warning them not to destroy the torture tapes. (The response ultimately ignored her entire objection to destroying the torture tapes.)

And, ultimately, they appear to have completed just one MFR showing Congress getting briefed on the use of waterboarding and the planned destruction of the torture tape. That MFR happens to integrate a line showing that Goss and Harman were briefed—but it tells us nothing about how they (or more pointedly, Harman) responded. It shows Roberts assenting (though he disputes that version). Just as importantly, the MFR (and possibly the briefing itself) falsely claims that OGC (probably John McPherson) found the torture depicted on the tapes had been “carried out in full accordance with the guidance” on torture; when CIA’s IG asked him about that subject in June 2003, he said he “would have to check guidance before answering.”

And that MFR—and not the Goss and Harman one, which was never finalized—was what got used on presidential decision-making.

Of course, we might ask Porter Goss what he remembers from that briefing. But last we heard, he was laughing about taking the blame for destroying the tapes.

IS JOHN DURHAM FINALLY DONE?

While we’re waiting to get the documents discussed in these NYT and WaPo and WSJ stories, in which (among other things) Dusty Foggo’s Deputy records that Porter Goss “laughed and said that actually, it would be he, PG, who would take the heat” about the destruction of the torture tapes, I wanted to look at this passage from the NYT:

One American official familiar with the matter cautioned that the e-mail messages were merely the account of one unnamed C.I.A. official, not the results of a formal investigation.

"It's a little risky to draw cosmic conclusions from something like that," he said.

And this similar passage, from the WaPo:

"There may have been some people who thought precise procedure wasn't followed, but I haven't heard of anyone who believed at the time that any law had been broken," said a U.S. official familiar with the matter, speaking on the condition of anonymity to discuss the subject of an ongoing investigation. "That's quite a different thing."

I raise these quotes—dismissing the damning nature of the emails while suggesting they don't amount to criminal activity—because these emails look like they could be some of the 13 documents John Durham withheld in the ACLU's FOIA. For example, the documents described appear to be some of these documents.

Document 5, November 8, 2005, Request for approval to proceed w/authorization of tape destruction

This document is a one-page cable from the field to CIA Headquarters requesting permission to destroy 92 videotapes.

Document 2, November 9, 2005, Request approval to destroy field videotapes

This document is a fourteen-page email chain with six embedded cables. Three of the cables relate to the decision to destroy the 92 videotapes. The remaining cables discuss an unrelated counter-terrorism operation.

**Document 4, November 9, 2005, Videotape
destruction confirmation**

This document is a one page cable from the field to CIA Headquarters, confirming the destruction of the videotapes.

**Document 23, November 25, 2005, Short
backgrounder of tape destruction**

This is a three-page email chain that provides background information on the tape destruction.

I'm interested in whether these documents are the 13 documents, because Durham was withholding those **until his investigation was finished**. Which would sure suggest that Durham may be finished.

Now, Robert Bennett appears in all these stories talking about how Rodriguez should be treated as a hero for destroying these tapes. The quotes make Bennett sound almost desperate to defend his client. So maybe ... just maybe ... we'll get an indictment over this.

Or the two officials quoted (perhaps they're the same guy) are simply trying to tamp down expectations before John Durham announces all this was hunky dory.

One more thing. The WSJ version of the story notes that the CTC drafted the request to destroy the tapes on November 4.

More than a year later, on Nov. 4, 2005, the CIA's Counterterrorism Center was asked to draft language requesting approval from Jose A. Rodriguez Jr., then chief of the agency's National Clandestine Service, to destroy the tapes, the memorandum says. Mr. Rodriguez authorized the tapes' destruction four days later, it says.

November 4 was the day after Leonie Brinkema

asked the government whether it had any tapes of interrogations of various detainees, and the same day that a member of Congress wrote a letter to CIA's IG (I suspect this was one of Jay Rockefeller's requests to see the IG report on the tapes). It was just days after the Dana Priest article on the black sites. But I'm sure the timing is all a coinkydink.