

CHENEY PISSED AT BUSH: DISTRACTION WITH THE WRONG COVER-UP

Today's news will be dominated with Bush's admission that Cheney was mad at him for not pardoning Libby.

Bush, in an interview aired Monday on TODAY, said Cheney was angry that Bush only commuted the sentence of I. Lewis "Scooter" Libby, convicted of lying during the leak investigation.

[snip]

'I can't believe you're going to leave a soldier on the battlefield,' former president says ex-VP told him.

Of course we already knew this. This was widely reported just after Obama's inauguration. And as I pointed out at the time, the underlying story to the non-pardon probably has everything to do with making sure that Libby won't ever reveal Bush's own role in exposing Valerie Plame's identity.

It would have been nice if Matt Lauer asked Bush about whether he refused to pardon Libby so as to keep him silent, but I suppose Lauer's job is to help Bush sell books, not to ask tough questions.

But an even better question would have been to ask Bush whether he believes, with the statute of limitations expiring on the torture tape destruction, his own role in approving torture is now safe. Bush allies have spun a nice story that the White House opposed the destruction of the torture tapes and was mad that Jose Rodriguez did it anyway. If that's true (ha!), then Bush ought to be pissed that Rodriguez is, apparently, getting away with it. But again, I

think Lauer's role is to help Bush sell books, not ask the difficult questions.

As the press is distracted with a rehashing of the successful cover-up of one of Bush's crimes, we ought to remember that today marks the successful cover-up of a more horrible crime.

BUSH ADMITS TO APPROVING TORTURE-BUT WHICH USE OF IT?

The WaPo reports that Bush, in his book, admits to approving waterboarding.

In a memoir due out Tuesday, Bush makes clear that he personally approved the use of that coercive technique against alleged Sept. 11 plotter Khalid Sheik Mohammed, an admission the human rights experts say could one day have legal consequences for him.

In his book, titled "Decision Points," Bush recounts being asked by the CIA whether it could proceed with waterboarding Mohammed, who Bush said was suspected of knowing about still-pending terrorist plots against the United States. Bush writes that his reply was "Damn right" and states that he would make the same decision again to save lives, according to a someone close to Bush who has read the book.

At one level, this is thoroughly unsurprising. We know the Bush Administration very deliberately implemented torture, so it's unsurprising to hear that it was approved by the

President.

But—at least as Jeffrey Smith relays the admission from Bush—it raises as many questions as it does answers.

It appears that Bush admits to approving torture for use with Khalid Sheikh Mohammed. That is, he approved torture sometime around March 1, 2003, when KSM was captured.

That date is itself very significant. After all, on February 5, 2003, the first Democrat (Jane Harman) was briefed that the CIA had used waterboarding. Her response was a letter, objecting not just to the destruction of the torture tapes, but also asking specifically whether Bush had signed off on torture.

I would like to know what kind of policy review took place and what questions were examined. In particular, I would like to know whether the most senior levels of the White House have determined that these practices are consistent with the principles and policies of the United States. Have enhanced techniques been authorized and approved by the President?

In response, CIA appears to have met with the White House around February 19, ostensibly to talk about an appropriate response. They also appear to have consulted with the White House on how they should record the results of the Gang of 4 briefings from that month; in the end, they only recorded the outcome of the Senate briefing—which Jay Rockefeller did not attend and at which Pat Roberts is recorded to have signed off not just on torture, but on destroying the torture tapes depicting that torture. In other words, for much of February 2003, CIA was working closely with the White House to create a false appearance of Congressional approval for torture, even while they were specifically refusing to give Congress something akin to a Finding making it clear the

President had signed off on that torture.

And now we come to find out that's precisely the period during which—at least according to Bush—he approved torture.

But note what that leaves out. At least from Smith's description, it appears that Bush says nothing about approving the waterboarding of Abu Zubaydah (nor the reported waterboarding of Ibn Sheikh al-Libi). Mind you, Ron Suskind has reported that Bush was intimately, almost gleefully, involved in ordering torture for Abu Zubaydah.

But Bush doesn't cop to that in his book.

Now, there may be good reason for that. After all, John Yoo had not yet written the memo claiming that waterboarding did not amount to torture at the time Abu Zubaydah was first tortured.

Moreover, there's the whole issue of the approval method for the torture that occurred before August 1, 2002.

The source says nearly every day, Mitchell would sit at his computer and write a top-secret cable to the CIA's counterterrorism center. Each day, Mitchell would request permission to use enhanced interrogation techniques on Zubaydah. The source says the CIA would then forward the request to the White House, where White House counsel Alberto Gonzales would sign off on the technique. That would provide the administration's legal blessing for Mitchell to increase the pressure on Zubaydah in the next interrogation.

According to multiple reports, the White House—Alberto Gonzales at least, if not his boss—approved the torture of Abu Zubaydah on a daily basis. And when you read the Bybee Memo and the OPR Report on it, it's very clear that the memo carved out legal authorization

specifically for the torture directly authorized by the President. Indeed, the White House's prior approval for torture—potentially up to and including waterboarding—may explain the urgency behind the memo in the first place, to provide retroactive legal cover for Bush's unilateral disregard for US laws prohibiting torture.

In other words, Bush has admitted to approving torture in 2003. But that likely obfuscates his earlier approval for torture at a time when he had no legal cover for doing so.

In other news, the statute of limitations on the torture tape destruction expires in just three or four days. Yet we've got silence coming from John Durham.

POLISH PROSECUTOR LOOKS BACKWARD; US PROSECUTOR LETS STATUTE OF LIMITATIONS TICK AWAY

ACLU reports that Rahim al-Nashiri's lawyer's request to include their client's treatment at a black site in Poland in the country's investigation has been successful.

The Polish prosecutor will investigate the detention and torture of Abd al-Rahim al-Nashiri at a black site in Poland after he was kidnapped and transported there by the CIA.

[snip]

Al-Nashiri, who is accused in the 2000 U.S.S. Cole bombing, was granted the status of "injured party" in Poland's ongoing investigation into torture in

response to a September 21 petition from his lawyers.

Jameel Jaffer uses this event to focus on how little our own country has done to hold its torturers accountable.

Today's announcement that Poland will investigate the torture of Mr. al-Nashiri serves as a stark reminder of how little has been done in the U.S. to hold top officials accountable for torture. Holding torturers accountable is essential to restoring American credibility at home and abroad – the U.S. can no longer remain silent as, one by one, other nations begin to reckon with their own agents' complicity in the torture program through prosecutions and judicial inquiries.

Of course, at the rate we're going, there will be no accountability. The statute of limitations on the destruction of the torture tapes will expire in just 11 days. At that point, the CIA will have officially gotten away with destroying the evidence of their torture, including evidence pertaining to al-Nashiri himself.

MORE TORTURERS COMING BACK TO CIA AS CONTRACTORS

Adam Goldman has another in his series of articles fleshing out the details of the torture that John Durham is investigating. Today's story describes the former FBI-turned CIA guy, "Albert" threatened Rahim al-Nashiri with a drill—with the approval of Albert's boss, "Mike." (Though the AP story says this threat

would be less than a felony assault, recall that John Yoo specifically forbade CIA to use death threats, so while it might not be assault it would—according even to John Yoo—constitute torture.)

I assume you'll go read that in its entirety.

While you're there, note this emerging pattern in Goldman's reporting on torture: the return of torturers as CIA contractors. He reports that "Albert" left the CIA then returned to train CIA officers as a contractor.

After leaving the CIA, Albert returned at some point as a contractor, training CIA officers at a facility in northern Virginia to handle different scenarios they might face in the field, according to former officials. Albert hasn't been involved in training CIA employees for at least two years, but a current U.S. official says he continues to work as an intelligence contractor.

A message left with Albert was not returned. It's not clear when he left the agency and became an intelligence contractor.

Recall that, in a story from a few weeks ago, Goldman reported that Jose Rodriguez (who gave the order to destroy the torture tapes, among other things) regularly lurks around CIA and ODNI as the head of Edge Consulting.

Rodriguez, now an executive with contractor Edge Consulting, a job that regularly gives him access to the national intelligence director's office and CIA headquarters, still hasn't received an official retirement party.

THE TIMING OF THE RAMZI BIN AL-SHIBH TAPES

I wanted to point out two details of timing on the Ramzi bin al-Shibh tapes:

- The tapes were made after CIA started getting worried about making interrogation tapes
- The tapes were disclosed after the CIA started trying to figure out what happened to the Abu Zubaydah tapes

The tapes were made after CIA already started getting worried about making interrogation tapes

The AP says the tapes were made while al-Shibh was in Morocco for the first time—sometime between September 17, 2002 and March 7, 2003.

When FBI agents finally had a chance to interview Binalshibh, they found him lethargic but physically unharmed. He projected an attitude suggesting he was unconcerned he had been caught.

Before the FBI made any real headway, the CIA flew Binalshibh on Sept. 17, 2002, to Morocco on a Gulfstream jet, according to flight records and interviews.

Current and former officials said this was the period when Binalshibh was taped. His revelations remain classified but the recordings, the officials said, made no mention of the 9/11 plot. It's unclear who made the tapes or how they got to the agency's Langley, Va., headquarters.

In March 2003, Binalshibh was moved to a Polish facility code-named Quartz soon after his mentor, Mohammed, was nabbed in Pakistan.

This would mean al-Shibh arrived in Morocco (and therefore the tapes were made) sometime after some people met at Langley and decided they should destroy the Zubaydah 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]

The CIA appears to have already been manipulating briefing records, possibly to give the appearance of Congressional support for either the program or the destruction of the tapes.

Note, too, that there are only two video tapes (plus the "audio" tape I've raised questions about here). If the audio tape were, in fact, just an audio tape, that would leave two video tapes. Which is how many tapes existed of Rahim al-Nashiri's interrogations, at least by the time they did the inventory. That's presumably because al-Nashiri was taken into CIA custody after the point when—on October 25, 2002—HQ told

the Thai black site to record over tapes every day.

It is now HQS policy that [redacted] record one day's worth of sessions on one videotape for operational considerations, utilize the tape within that same day for purposes of review and note taking, and record the next day's sessions on the same tape. Thus, in effect, the single tape in use [redacted] will contain only one day's worth of interrogation sessions.

Now we know they kept two (or maybe three) tapes for al-Nashiri (presumably taking notes off one day's tape while the other was being used to record new interrogations) because the tape inventory shows the following:

Detainee #2

[Tape] 91 [Redacted]tape and rewind #2

[Tape] 92 3 [Redacted] use and rewind #3
[redacted] final

While obviously we have no such inventory showing the al-Shibh tapes, it is possible that they were used in the same manner as the al-Nashiri tapes were—to collect just one day's worth of interrogation to assist in transcription or note-taking. (And remember, ultimately there were transcriptions made of the al-Shibh tapes, though we don't know when that happened). It's possible then—though this is just a wildarsed guess—that the existence of just three tapes suggests they were started after HQ decided to tape over tapes (so after October 25), or that they first implemented the policy for al-Shibh sometime before October 25.

Also note the content of the last three—presumably chronologically—tapes of Abu Zubaydah. Tapes 89 and 90 are “use and rewind” #1 and #2. But the tape just before that—tape 88—has “no video but there is sound.” Thus, the

last three tapes from Abu Zubaydah consist of two video tapes and one “audio” tape, just like the three tapes from al-Shibh.

If in fact the 2-3 al-Shibh tapes only include the last days of his interrogation on which taping was used, then the AP source’s claim that they simply show him sitting in a room being interrogated doesn’t mean that the tapes contained no forensic evidence of something else—more abusive interrogations that happened on earlier days. After all, the tapes would no longer “show” what had happened during earlier interrogation sessions.

One more note about this early period. One question the AP raises is when and how the tapes were moved from Morocco to Langley.

It’s worth remembering that the Zubaydah and al-Nashiri tapes were also moved at one point. In a cable from HQ to the field (we know this from Vaughn Indices that described this cable before it was released) written on December 3, 2002, just days after John McPherson reviewed the torture tapes and presumably discovered they had been tampered with, someone says:

It was a mistake to move [redacted] tapes [redacted] in light of Ref C guidance.

Notably, given that this refers to tapes being moved in the past tense on December 3, this may suggest the tapes were moved from the black site before it was finally closed. Mind you, the detail may be completely irrelevant to al-Shibh’s tapes, but they do suggest people in the field were moving tapes without clear approval from HQ.

The tapes were disclosed after the CIA started trying to figure out what happened to the Abu Zubaydah tapes

As I noted here, the story the AP’s sources told (that a person stumbled across a box under a desk with all three al-Shibh tapes in it) and

the story DOJ told Leonie Brinkema (that they learned first of one tape, and then, after asking CIA to make sure there were no more) differ in key ways.

But that difference gets all the more interesting given indications that CIA was trying to figure out what had happened to the Zubaydah tapes in precisely the same time period. Here's how the chronology works (with some potentially-related personnel moves included):

August 27, 2007: Alberto Gonzales resigns

September 13, 2007: A CIA attorney notifies DOJ of the existence of one of the al-Shibh tapes

September 14, 2007: CIA reports Michael Sulick will replace Jose Rodriguez

September 17, 2007: Bush nominates Michael Mukasey Attorney General

September 19, 2007: DOJ reviews the al-Shibh tape and compares it to the transcript; DOJ subsequently asks CIA to check to see if there were more tapes and to provide the cables they had reviewed as part of the discovery review

September 25, 2007: White House withdraws John Rizzo's nomination to be CIA General Counsel in response to pressure from Democrats about the legality of torture methods

September 25, 2007: A CIA email reports:

Below is the information for the cable granting approval to destroy the [redacted] tapes

DIRECTOR [redacted]

Document Date: 08 NOV 2005

File Number [redacted] – No clue about this file number, searched in

[redacted] with zero returns.

Subject: EYES ONLY FOR [REDACTED] –
DDO APPROVAL TO DESTROY
[REDACTED]VIDEO TAPES

September 30, 2007: Rodriguez' last day
at CIA

October 5, 2007: Someone forwards, with
no comment or explanation, the September
25 email searching for the destruction
approval cable

October 15, 2007 (roughly): A group of
conservatives test Michael Mukasey on
whether or not torture is illegal

October 18, 2007: DOJ reviews the second
and third al-Shibh tape

October 18, 2007: In confirmation
hearings, Michael Mukasey refuses to say
waterboarding is torture

October 25, 2007: DOJ informs Leonie
Brinkema of factual errors in two
declarations submitted in Moussaoui case

November 8, 2007: Mukasey confirmed as
Attorney General

Mind you, we don't know how long after CIA
discovered the first al-Shibh tape they told DOJ
about it. But the known dates show that CIA told
DOJ about just one of three tapes the day before
CIA announced publicly that Rodriguez would be
leaving (I think one possible explanation for
the discovery of the tapes is just that they
were discovered in boxing up Rodriguez' worldly
belongings). The fact that a CIA lawyer revealed
the singular tape to DOJ is all the more
intriguing given that it occurred at about the
same time as Rizzo—then Acting General
Counsel—had to withdraw his nomination because
of his role in approving torture (and
potentially, in covering it up); was he the
lawyer who told DOJ about the al-Shibh tapes?
And again, though we don't know the actual date

when CIA told DOJ there were two more tapes, in what appears to be the interim period, someone at CIA started looking for the cable approving the destruction of the Zubaydah tapes, without much immediate luck (though presumably they would have at least hints of Rodriguez' central role in destroying the tapes).

Given how all this coincides with Alberto Gonzales' resignation and his replacement by Michael Mukasey, it is possible that the September 25 and October 5 searches for the torture tape destruction approval were a response to a DOJ request—either in conjunction with their preparation to reveal the al-Shibh tapes to Brinkema, or possibly in conjunction with another inquiry. (Note, OPR first got copies of the Combine and CAT OLC memos on August 29, so for some reason new torture information was being shared at DOJ at precisely this time). But it certainly seems possible that DOJ first learned of the destruction of the Zubaydah tapes as they learned about the al-Shibh tapes, such that when DOJ told Brinkema that CIA's review was complete, they included within that the Zubaydah tapes.

Aside from suggesting that the al-Shibh videos may have been tied to a more general early inquiry into the destruction of the torture tapes (one presumably stymied by Michael Mukasey, who had had to promise to do no torture investigation in order to be appointed AG), it raises questions about the declaration to Brinkema. It's worth looking at the hedged language DOJ used in their October 25 letter:

The Government respectfully submits this letter to inform the Court that two ex parte declarations previously submitted by the Central Intelligence Agency ("CIA") in this case contain factual errors concerning whether **interrogations of certain enemy combatants** were audio or video recorded.

[snip]

We are unaware of recordings **involving the other enemy combatant witnesses at issue in this case** [half line redacted].

[snip]

After learning of the existence of the first video tape, we requested the CIA to perform an exhaustive review to determine whether it was **in possession** of any other such recordings for **any of the enemy combatant witnesses at issue in this case.**

[snip]

1 [redacted] was one of the enemy combatant witnesses whom Moussaoui wanted to call to testify on his behalf; [two lines redacted]

[snip]

The fact that audio/video recording of enemy combatant interrogations occurred, and that the United States was in possession of three of those recordings is, as noted, inconsistent with factual assertions in CIA declarations [dated May 9, 2003 and November 14, 2005]

Start with the final passage: "audio/video recording ... occurred" and the US was "in possession of three of those recordings." This language would be consistent with knowledge of the Zubaydah tapes, provided that the person making the statement knew they had been destroyed. As to the rest of it, look how carefully DOJ seems to emphasize Moussaoui's focus on al-Shibh's interrogations. The redactions noted here may include a reference to Zubaydah or al-Nashiri. Or it may be that DOJ was simply very careful to always caveat those statements to refer to the enemy combatants that Moussaoui had asked about by name by the May 2003 declaration.

In any case, it sure seems to reflect a knowledge on the part of DOJ that someone had

destroyed the torture tapes. And given the identification of the date that destruction was approved—November 8, 2005—DOJ would have known that the tapes had been destroyed days before DOJ told Leonie Brinkema they didn't "have" video tapes of the interrogations at question.

Good thing for the Bush Administration they were able to convince someone already implicated in torture (through the Padilla case) to promise not to investigate torture, huh? Because it sure seems like DOJ already knew of this obstruction when Mukasey took over at DOJ.

WERE THE RAMZI BIN AL-SHIBH TAPES ALTERED LIKE THE ABU ZUBAYDAH TAPES WERE?

Given that the AP has filled in some details about the Ramzi bin al-Shibh tapes someone had hidden under a desk at CIA, I wanted to look back at the letter DOJ wrote to Leonie Brinkema in 2007, when the government first admitted it had been sitting on those tapes.

AP says the tapes were found all at once while DOJ only learned about them over a month's time

As you recall, DOJ sent this letter on October 25, 2007, to tell Judge Leonie Brinkema (who had presided over the Zacarias Moussaoui trial) and a judge who had presided over appeals in that case that two CIA declarations DOJ had submitted—on May 9, 2003 and on November 14, 2005—"had factual errors."

Here's how the AP describes the tapes and their discovery:

The CIA has tapes of 9/11 plotter Ramzi Binalshibh being interrogated in a secret overseas prison. Discovered under a desk, the recordings could provide an unparalleled look at how foreign governments aided the U.S. in holding and questioning suspected terrorists. The two videotapes and one audiotape are believed to be the only remaining recordings made within the clandestine prison system.

[snip]

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.**

[snip]

The CIA first publicly hinted at the existence of the Binalshibh tapes in 2007 in a letter to U.S. District Judge Leonie M. Brinkema in Virginia. The government twice denied having such tapes, and recanted once they were discovered. But the government blacked out Binalshibh's name from a public copy of the letter. [my emphasis]

The DOJ letter describes a slightly different (though not necessarily inconsistent) chronology. It claims the CIA informed DOJ first of one videotape, and then roughly a month later, of the second videotape and audiotape.

On September 13, 2007, an attorney for the CIA notified us of the discovery of a video tape of the interrogation of [1.5 lines redacted] On September 19, 2007, we viewed the video tape and a

transcript [redacted] of the interview. The transcript contains no mention of Moussaoui or any details of the September 11 plot. In other words, the contents of the interrogation have no bearing on the Moussaoui prosecution. The evidence of the video tape, however, is at odds with the statements in two CIA declarations submitted in this case, as discussed in detail below.

After learning of the existence of the first video tape, we requested the CIA to perform an exhaustive review to determine whether it was in possession of any other such recordings for any of the enemy combatant witnesses at issue in this case. **CIA's review, which now appears to be complete, uncovered the existence of a second video tape, as well as a short audio tape,** both of which pertained to interrogations [redacted]. On October 18, 2007, we viewed the second video tape and listened to the audio tape, while reviewing transcripts [redacted] Like the first video tape, the contents of the second video tape and the audio tape have no bearing on the Moussaoui prosecution—they neither mention Moussaoui nor discuss the September 11 plot. **We attach for the Courts' review ex parte a copy of the transcripts for the three recordings.**

At our request, CIA also provided us with intelligence cables **pertaining to the interviews recorded on the two video tapes.** Because we reviewed these cables during our discovery review, we wanted to ensure that the cables accurately captured the substance of the interrogations. Based on our comparison of the cables to the [redacted] videotapes, and **keeping in mind that the cables were prepared for the purposes of disseminating intelligence,** we found

that the intelligence cables accurately summarized the substance of the interrogations in question. [my emphasis]

So the AP's sources suggested that a staffer simply pulled out a box [Christmas in September!] and found all three tapes—presumably at the same time—whereas DOJ only found out about one tape at first, then sent CIA back to see if there were more. If, as the AP suggests, the CIA found the tapes all at once, then it suggests that the CIA withheld two of the tapes from DOJ until DOJ asked for them specifically. Given that DOJ reviewed the first tape on September 19 and the second and third on October 18, there seems to have been a delay in getting those second two tapes, which might either suggest the tapes weren't found at the same time, or CIA was very slow in turning over tapes they already knew existed.

The DOJ's explanation of why CIA didn't mention the tapes assumes CIA didn't check with CTC before writing the Declarations

Now, the AP reports that John Durham has expanded his investigation to cover the Ramzi bin al-Shibh tapes as well.

A Justice Department prosecutor who is already investigating whether destroying the Zubaydah and al-Nashiri tapes was illegal is now also probing why the Binalshibh tapes were never disclosed.

The Brinkema letter provides this explanation why the people who wrote the Declarations in 2003 and 2005 didn't mention the tapes.

Unbeknownst to the authors of the declarations, the CIA possessed the three recordings at the time that the Declarations were submitted. We asked the CIA to ascertain the reason for such an error. [1.5 lines redacted] As best as can be determined, it appears that

the authors of the Declarations relied on assurances of the component of the CIA that [one line redacted] unknowing that a different component of the CIA had contact with [one line redacted]

While this passage is heavily redacted, it seems to suggest DOJ claims the authors of the Declarations didn't know which components of the CIA had had contact with Ramzi bin al-Shibh (and, potentially, Abu Zubaydah). But the AP reports the tapes were found lying around the Counterterrorism office. That seems to suggest (though we can't be sure with all the redactions) that the people who wrote the Declarations had no clue that CTC was running the torture program.

Which is really only plausible if you ensure the people who wrote the Declarations were completely compartmented out of the most basic information about the interrogation program.

But I guess ensuring unbelievable levels of ignorance on the part of the CIA Declarants would be a good way to ensure none of the tapes were released pursuant to discovery in the Moussaoui trial.

The reviews DOJ did of the tapes recall the earlier CIA whitewash of the tape content

What I'm particularly interested in—particularly given the news that John Durham has expanded his investigation to cover the obstruction involved with these tapes—is the description of the review that DOJ conducted of the tapes.

On September 13, 2007, DOJ learned of the first tape. On September 19, they viewed the videotape and a transcript—the provenance of which they redact (so we don't know if it was contemporaneous or whether it were done for the benefit of DOJ, and we don't know who did it or whether it also involves translation). Then on October 18, CIA admitted it had another “video tape” and an “audio tape.” Once again, DOJ reviewed the tapes and read the transcript.

Then, DOJ reviewed the intelligence cables based on just the “video tapes,” but not, apparently, the “audio tape,” “to ensure that the cables accurately captured the substance of the interrogations.” After assuring themselves that the version of the tapes they had reviewed the first time—the cables—was close enough “keeping in mind that the cables were prepared for the purposes of disseminating intelligence,” they then gave Brinkema the transcripts for all three tapes, but not the tapes themselves, to review.

I’ve got a couple of questions about DOJ’s actions here:

- Why would they review the cables at all?
- Why would they review the cables for the “video tapes” but not the “audio tape”?
- Why would they give Brinkema the transcripts but not the videos?

I’d love to have the lawyer folks—or anyone else—weigh in in comments. But here is one possible explanation. It’s possible that when DOJ reviewed the tapes they **saw** something on the tapes that they thought might be pertinent, even if it did not constitute a mention of Moussaoui or 9/11. You know—like the physical condition of al-Shibh, or some physical coercion? If so, that might explain why they didn’t review the cables from the “audio tape”—because they “saw” nothing on those tapes. (Alternately, it’s possible that CIA withheld the cables based on the audio taped interrogation when DOJ did its discovery review, which would be damning all by itself.)

They say they wanted to review the cables “[b]ecause we reviewed these cables during our discovery review, we wanted to ensure that the cables accurately captured the substance of the interrogations.” This sounds, partly, like CYA: they wanted to make sure the representations DOJ had made—as distinct from the CIA

Declarations—were accurate and fair. But the fact they even **did** the review of the cables suggests they had their doubts. Add in the heavily caveated judgment that the cables did reflect the content of the interrogation (they seem to conclude the cables reflect the intelligence gained during the interrogation, but not some other aspects of it), and it sure seems like there's a discrepancy between the "video tapes" and the cables. Just not one DOJ felt they were responsible for, given the terms of Brinkema's order on discovery, at least not after Moussaoui had already plead guilty.

Now onto the description of the three tapes: 2 "video" tapes and 1 "audio" tape. Which, in plain language, would seem to suggest that the CIA had means to both record video (as they did with Abu Zubaydah and Rahim al-Nashiri in the same time period) as well as means to record audio. There are no indications the torturers in Thailand made audio tapes. There is, however, proof that by late 2002, the CIA had already altered the Zubaydah tapes such that the video in some of them had been destroyed; they showed nothing but snow.

In other words, I think it distinctly possible—particularly given that the tapes showed up in a box under a desk in the same CTC department that had knowingly tried to cover up the earlier tampering with the Zubaydah tapes—that the one "audio" tape didn't start out that way, that it got altered in similar fashion to the Zubaydah tape.

That's all wildarsed speculation, mind you.

But there is some evidence that Durham is not only investigating the 2005 destruction of the torture tapes but also the earlier, 2002, tampering with them. (And his investigation seems to have taken on new energy when he gave John McPherson—who was involved in CIA's first attempt at covering up this tampering—immunity.) If Durham is collecting evidence that the CIA engaged in a cover-up of torture in its treatment of the Zubaydah tapes, then both the

condition of the al-Shibh tapes (if they still exist) and CIA's earlier treatment of them (including such things as making sure those who wrote Declarations for Brinkema were ignorant of who was running the torture program) would serve to round out his case (and potentially provide the forensic evidence now lacking for the Zubaydah tapes).

All of which probably answers my third question, why DOJ didn't give Brinkema the tapes themselves. Mind you, I'm sure they accounted for that in the name of protecting sources and methods (you know? methods? fly them to Morocco for the scalpel-on-penis treatment!). But by withholding the tapes themselves, they prevented Brinkema from seeing whatever it is they saw when they decided they needed to review the cables to see if they were accurate.

Note how carefully the AP's sources claim that the tapes show no "harsh interrogation 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 if Binyam Mohamed is telling the truth about the scalpel-on-the-penis treatment in Morocco (and thus far, his claims have held up against the documentary evidence), we know the claim that "Morocco was just a way station of sorts" is an out and out lie. But it still may be true that the tapes don't show—or didn't, before one of them became an audio tape, if that's what happened—the approved methods of the CIA program

itself. That doesn't rule out the tapes showing other things—like the outright beatings that Mohamed describes having happened in Morocco.

Which appears to be one way the DOJ review of these tapes exactly matches McPherson's review of the Zubaydah tapes in 2002. Both reviewed the tapes and the cables to see whether the cables were a reasonably accurate version of what appeared on the tapes. But both apparently stopped short of comparing the tapes to the limits on interrogation DOJ laid out in 2002. Because if you're DOJ, it would sure suck to be looking at evidence of torture, huh?

Update: papau's comment about the implausibility that CIA found the tapes under a desk reminded me I wanted to note one more difference between the DOJ version and the AP one. DOJ says the "CIA came into possession of the three recordings under unique circumstances involving separate national security matters unrelated to the Moussaoui prosecution." AP almost suggests the discovery was accidental.

But in 2007, a staffer discovered a box tucked under a desk in the CIA's Counterterrorism Center and pulled out the Binalshibh tapes.

There seems to be a related story here about why they were looking and discovering boxes full of torture evidence in 2007.

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.

ABU ZUBAYDAH'S AMERICAN-TAXPAYER PAID TOUR OF THE WORLD

You should read two pieces in conjunction this morning. First, this Andy Worthington piece from last week, that lays out new details on the black site CIA used in Poland in 2002-2003.

On Friday, the Polish Border Guard Office released a number of documents to the Warsaw-based Helsinki Foundation for Human Rights, which, for the first time, provide details of the number of prisoners transferred by the CIA to a

secret prison in Poland between December 5, 2002, and September 22, 2003, and, in one case, the number of prisoners who were subsequently transferred to a secret CIA prison in Romania. The documents (available [here](#) and [here](#)) provide important information about the secret prison at Szymany, in northeastern Poland, and also add to what is known about the program in Romania, which has received far less scrutiny.

[snip]

Friday's revelations by the Polish Border Guard Office are, however, even more significant, firstly because they include, for the first time, confirmation that N63MU flew into Poland on December 5, 2002, and secondly, because they provide details of the number of passengers on seven of the flights, as follows:

December 5, 2002: 8 passengers delivered

February 8, 2003: 7 passengers delivered; 4 others flown to an unknown destination

March 7, 2003: 2 passengers delivered

March 25, 2003: 1 passenger delivered

May 6, 2003: 1 passenger delivered

July 30, 2003: 1 passenger delivered

September 22, 2003: 0 passengers delivered; 5 flown to Romania

Then, read this AP piece, which fleshes out

details about the first time that Abu Zubaydah and three other detainees went to Gitmo.

Four of the nation's most highly valued terrorist prisoners were secretly moved to Guantanamo Bay, Cuba, in 2003, years earlier than has been disclosed, then whisked back into overseas prisons before the Supreme Court could give them access to lawyers, The Associated Press has learned.

[snip]

Before dawn on Sept. 24, 2003, a white, unmarked Boeing 737 landed at Guantanamo Bay. At least four al-Qaida operatives, some of the CIA's biggest captures to date, were aboard: Abu Zubaydah, Abd al-Nashiri, Ramzi Binalshibh and Mustafa al-Hawsawi.

Together, the articles provide key new details of the global voyages that Abu Zubaydah and other key detainees took between CIA black sites. And the AP piece confirms something earlier revealed in the ICRC report completed in 2007 and released last year: that at least four of the High Value Detainees were in Gitmo in 2003-2004, until they were moved again precisely to hide them from the ICRC.

ICRC notes that four detainees believed that they had previously been held in Guantanamo, for periods ranging from one week to one year during 2003/4. They reported recognising this location upon return there in September 2006, as each had been allowed outdoors on a daily basis during their earlier time there. The ICRC has been assured by DoD that it was given full notification of and access to all persons held in Guantanamo during its regular detention visits. The ICRC is concerned, if the allegations are confirmed, it had in fact been denied access to these persons during

the period in which they were detained there.

Now, the two pieces in conjunction answer key questions. As Worthington points out, we know from this that Abu Zubaydah and Rahim al-Nashiri (and, he adds, Ramzi bin al-Shibh) got moved from Thailand to Poland in December 5, 2002, as CIA was making their first efforts to close the Thai black site and destroy the torture tapes. And then the three of them, plus Mustafa al-Hawsawi, got moved to Gitmo the following September 24, 2003. Then, on March 27, 2004, they were taken away from Gitmo.

One implication of this, of course, is that the death threats used against al-Nashiri—reportedly investigated by John Durham (and, I have speculated, possibly one reason Philip Mudd retired in March) happened on Polish soil.

It also times interestingly with Jack Goldsmith's tenure at OLC (October to July) and even more interestingly with the CIA IG Report (they got Zubaydah and Nashiri—against both of whom the IG Report described torture—out of Gitmo before Congress got a hold of the report).

But the two reports also lay out further area for inquiry. At least according to what detainees told the ICRC, at least one of the detainees who were in Gitmo in this early period were only there for a week. But that also suggests some of the four might not have known they were at Gitmo when they returned in 2006, perhaps because they didn't have the same exercise privilege (and remember that detainees, at least as of a few months ago, still exercised only with those who they had been in black sites before, so they couldn't compare notes). Does this mean others were moved to Gitmo's "Strawberry Fields" after this first bunch?

Finally, note how CIA's spokesperson, in his comment to the AP, wants this story to be about events that happened six years ago.

CIA spokesman George Little said: “The so-called black sites and enhanced interrogation methods, which were administered on the basis of guidance from the Department of Justice, are a thing of the past.”

Aside from the fact that Little said this while John Durham’s inquiry into the torture that exceeded the guidance of DOJ is ongoing, it also distracts attention from other inconvenient little facts: like the presumably ongoing existence of Camp No, and the weird qualification in Obama’s Gitmo closure orders limiting them only to those at Gitmo considered to be enemy combatants.

Still, kudos to Worthington and the AP for their work to tease out the global trajectories of these detainees.

JAMES CLAPPER HEDGES ON PROVIDING ONGOING UPDATES ON SPECIAL OPS ACTIVITIES (AND OTHER DISCONCERTING ANSWERS)

As Josh Rogin and Marc Ambinder note, James Clapper is scheduled to get a vote tomorrow in the Senate Intelligence Committee on his nomination to be Director of National Intelligence. Ambinder reports that Kit Bond is most dissatisfied with Clapper at this point, the rest of the committee really ought to join in Bond’s dissatisfaction given his answers to

their post-hearing questions. Take this response to Russ Feingold:

Success in the area of counterterrorism requires that the Intelligence Community and the Department of Defense coordinate their activities, and that congressional oversight not be fragmented. One example is Section 1208 of U.S.c. Title 10, which authorizes assistance to foreign forces, irregular forces, groups, or individuals supporting U.S. counterterrorism military operations. The Senate Armed Services Committee has expressed concern that U.S. Special Operations Command may be leveraging this authority for long-term engagement with partner nations, rather than exclusively to support operations, particularly in countries other than Iraq and Afghanistan. Information about the use of Section 1208 is therefore critical if the Intelligence Committee is to conduct oversight of how the U.S. government as a whole is fighting terrorism around the world.

- Will you ensure that this information is provided to the Committee?

Section 1208 of the FY 2005 National Defense Authorization Act, PL 108-375, requires the Secretary of Defense to submit an annual report “to the congressional defense committees on support provided to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism.”

If confirmed as the DNI I would not view the provision of DoD clandestine military operational information to the SSCI as being within my authority or responsibility; however, I would fully support an arrangement agreed to by the

affected oversight committees for the submission of information to Congress concerning this matter. [my emphasis]

Feingold's question pertains to this issue.

- Section 1208 (Support to Foreign Forces)

Section 1208 of the FY 2005 NDAA authorized DOD to reimburse foreign forces, groups, or individuals supporting or facilitating ongoing counter-terrorism military operations by U.S. special operations forces (SOF). The FY 2009 NDAA authorized \$35 million a year for this authority through FY 2013. The Obama Administration did not request a change to Section 1208.

The HASC bill increases the annual budgetary authority to \$50 million in order to limit funding restraints during the planning of Section 1208-funded operations. The HASC was generally supportive of Section 1208 programs and was pleased with more effective reporting of Section 1208-related activities. The HASC voiced concern, however, that Section 1208 should not become a "train and equip" program managed by Special Operations Command (SOCOM). **The HASC also expressed uneasiness over the use of private contractors to carry out Section 1208 activities and thus required additional reporting requirements to track such contracting.**

The SASC bill does not raise the Section 1208 funding level, and the committee expressed dissatisfaction with current reporting. **SASC voiced concern that SOCOM may be using 1208 funds to leverage long-term engagement with partner nations rather than exclusively for supporting military operations by**

U.S. special operations forces to combat terrorism. The SASC asked SOCOM to review their Section 1208 execution to eliminate such leveraging. [my emphasis]

In other words, the House Armed Services Committee has expressed concern that DOD is using this Special Ops provision to train allies in military operations, and **using contractors to do so**. As Feingold notes, the Senate Armed Services Committee is concerned that in the guise of supporting distinct operations, DOD is engaging in long-term operations.

To me, this reads like DOD is using this provision to engage in war in countries against which we're not at war: like Somalia and Yemen. This sounds like the authority DOD is using to engage in operations—including drug related ones—in 75 countries, as Jeremy Scahill has reported.

So Russ Feingold, presumably thinking of the way in which the Bush Administration started using Special Ops for covert actions partly to hide them from the intelligence committees, asks the retired general nominated to head the Intelligence Community whether he would share information with the intelligence committees about the activities. And Clapper responds, I'm not legally obligated to. But, if the Armed Services Committees agree, we can do some info sharing. Nothing, incidentally, about sharing the information in as timely fashion as the CIA would have to share information on less risky covert ops. Just a yearly report, I guess.

Now perhaps Clapper's willingness to share information is all well and good and I shouldn't worry.

But then there's Clapper's answer about how to improve information sharing in the Intelligence Community. The answer: to give ODNI the same secrecy provisions that CIA and NSA have.

In addition, if confirmed, I will also look to Congress if legislative changes

are needed to facilitate information sharing. For example, information sharing and the IC's ability to analyze intelligence information would be enhanced if Congress enacts legislation to give the ODNI the same operational files exemption granted to CIA, NGA, DIA, and NSA.

As an example why this is important, the operational files exception is what CIA has used to explain why it didn't reveal the existence of the torture tapes in response to legal inquiries on records on torture. And further note, this is the single, solitary change that Clapper said he'd like to make legislatively, even while he suggested that legislative fixes weren't needed for other broken aspects of the IC.

And that extends to putting our satellite and telecom surveillance under civilian control. When Kit Bond asked Clapper why he had flip-flopped on his earlier stated desire to move NGA and NSA under civilian control, one of his stated newfound concerns with doing so pertained to civil liberties.

In your meeting with me last week, you said that while you once believed that the DNI should have departmental authority over military intelligence agencies like NGA, you no longer believed that would be wise. Please take me through the evolution of your thinking on this important issue.

- What led you to believe it would be a good idea and what changed your mind?

I don't recall saying that the DNI should have "departmental authority" over military intelligence agencies like NGA, however when the IRTPA was being debated in the Congress, Gen Hayden (then serving as Director of NSA) and I (then serving as Director of NGA) suggested that another paradigm should

be considered: moving the agencies who's first letter is "N" (as in national) out of the Department of Defense, and under the operational control of a DNI, might have merit. Putatively, although not expressed that way at the time, this would mean a "Department of Intelligence." I have since come to believe that this arrangement would not be workable, since it could pose profound civil liberties challenges, and the "donor" Department (DOD) would, over time, regenerate the capabilities lost to the "Department of Intelligence," since the support rendered by these agencies is so integral to warfighting.

Now, to be fair, Clapper may well be right about DOD's interest in recreating these entities (though Congress would have to approve their budgets!). But it seems to me moving NSA and NGA might be better for civil liberties, as it would make it harder for some clown like John Yoo to claim that the military in hot pursuit could wiretap apartment buildings as he did in one of his opinions.

But it's the last two issues might be of greatest concern.

First, as Kit Bond noted, Clapper somehow managed to overlook the timeline stipulated by transparency questions and neglected to list his 2006-7 affiliation with a number of intelligence contractors, including GEOEYE, 3001, Inc., Sierra-Nevada Corp, CSIS, US Geospatial Intelligenc Foundation, and DFI International (the last as C00). For a discussion of why this is important, see Tim Shorrock's post on it.

Then, finally, there's Clapper's answers about the Iraq NIE:

During your confirmation hearing you noted that you agreed with the findings of the Committee's Iraq report. that you were very familiar with the flaws in the

NIE. having had your “fingerprints on it” as a member of the National Intelligence Board, and that you could “attest. since [you were] there, [the failure] was not because of politicization or any political pressure. It was because of ineptness.”

- Did you see any evidence during this period that the Intelligence Community provided intelligence assessments of Iraq to the Administration that differed, in substance, from those provided to Congress and the public?

No, from my vantage as Director of (then) NIMA, I did not see any evidence that the Intelligence Community provided intelligence assessments on Iraq to the Administration that differed, in substance, from those provided to Congress and the public.

- Did you ever hear a member of the Administration say something publicly about the intelligence on Iraq that you believed at the time was not supported by the intelligence?

I wondered about the certitude with which some in the administration spoke about the presence of WMD in Iraq, but I had no basis from my position as Director of NIMA to question those statements.

Of course, Congress never saw the full NIE, so by definition, the Administration got substantially different information—like some key footnotes—than most of Congress got.

Now, I’m at a bit of a loss because my books are all packed up, so I won’t find this detail directly. cBut implicit in Clapper’s answer is a claim that the NGA never gave the Administration information on—for example—what it was seeing in the Tora Bora area that didn’t get passed onto Congress. Clapper is claiming that all the

wackadoodle satellite reports of WMD that Scooter Libby made the Iraq Survey Group chase down got shared with Congress.

I don't buy it.

Then there's the view Clapper did endorse: the claim that Saddam had snuck all his WMD out of Iraq before we got to it—something that, as head of NGA, he presumably should have had information to rebut.

Frankly, it pains me to see Kit Bond taking the lead on raising questions about Clapper's nomination here while Dems help the Obama Administration rush him through before the August break.

This is a guy who appears to disagree with everything the Senate Intelligence Committee purports to believe about the DNI position. And yet even while they're not getting cooperation on making changes to the position itself, they're giving the Administration everything it's asking for about its nominee.

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 Helgerson 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.