

HAYDEN'S LETTER

Marty Lederman has posted a copy of Michael Hayden's letter to the CIA from yesterday. I wanted to riff further on it. The non-bold brackets below are Marty's comments. The bold italics are mine. I know this may be hard to read, but I wanted to leave in Marty's comments because he's a lot smarter than I am.

Message from the Director: Taping of Early Detainee Interrogations

The press has learned that back in 2002, during the initial stage of our terrorist detention program, CIA videotaped interrogations, and destroyed the tapes in 2005. I understand *Note the voice here and recall that they seem to never have fully briefed Mike McConnell on all the details of the illegal warrantless wiretap program. I'm wondering how Hayden "understands" this process? Does he have all the details?* that the Agency did so only after it was determined they were no longer of intelligence value and not relevant to any internal, legislative, or judicial inquiries—including the trial of Zacarias Moussaoui. [What about the 9/11 Commission? What about the failure to tell the Moussaoui judge about these tapes? What about the obvious future legislative and judicial inquiries? (Note that the destruction likely occurred just after Dana Priest broke the story of the CIA black sites in 2005.)] *I'm not sure I agree with Marty—I think other possible dates for the destruction of the tapes, given the timeline, are around the time when OLC was writing new opinions on torture (between May 10 and May 30, 2005). That said, if the tapes were destroyed after Priest's story (November 1), then they were almost certainly destroyed after*

Brinkema asked for the damn things (November 3) but before the government said they didn't have them (November 14), which would make the claim that they were not relevant to a judicial proceedings a bald-faced lie. The decision to destroy the tapes was made within CIA itself. The leaders of our oversight committees in Congress were informed of the videos years ago and of the Agency's intention to dispose of the material. [Yes, and what did they say about that?] Our oversight committees also have been told that the videos were, in fact, destroyed. I love the timing on this. Given the reporting, I'm guessing the Intell Committees were informed in 2003 (when Jane Harman wrote her CYA letter), and then informed they had been destroyed in 2006 (when it was too late to do anything about it). I had thought yesterday that the heads of the Intell Committees were told in 2005, during the debates on torture and the fallout from Abu Ghraib. But apparently the CIA kept mum about that.

If past public commentary on the Agency's detention program is any guide, we may see misinterpretations of the facts in the days ahead. Uh huh. If the manuals from Gitmo didn't specify that Red Cross couldn't see certain detainees, we wouldn't all suspect the worst—it's your own damn fault.

With that in mind, I want you to have some background now. Shorter Hayden: Here is the party line. Learn it, love it, and use it.

CIA's terrorist detention and interrogation program began after the capture of Abu Zubaydah in March 2002. Zubaydah, who had extensive knowledge of al-Qa'ida personnel and operations, had been seriously wounded in a firefight.

When President Bush officially acknowledged in September 2006 the existence of CIA's counter-terror initiative, he talked about Zubaydah, noting that this terrorist survived solely because of medical treatment arranged by CIA. Under normal questioning, Zubaydah became defiant and evasive. It was clear, in the President's words, that "Zubaydah had more information that could save innocent lives, but he stopped talking." *Would you care to discuss Zubaydah's mental illness? Because that might explain why he was evasive—reason itself was apparently unavailable to Zubaydah.*

That made imperative the use of other means to obtain the information—means that were lawful, safe, and effective. To meet that need, CIA designed specific, appropriate interrogation procedures.

Before they were used, they were reviewed and approved by the Department of Justice and by other elements of the Executive Branch [why other "elements" of the Executive branch? Which ones? And doesn't this confirm that OLC approved the CIA techniques – probably orally – even before the 08/01/02 Torture memo was promulgated?] *I take those other elements have the initials O.V.P. Also, I wonder if they destroyed the 2002 videos because they were filmed before there was written guidance? Even with the great care taken and detailed preparations made, the fact remains that this effort was new, and the Agency was determined that it proceed in accord with established legal and policy guidelines. So, on its own, CIA began to videotape interrogations. Why the "on its own" part? I'd wager some money it's a lie designed to protect either Dick or the President. Remember that one of the*

purposes of the photos and videos of high value detainees was for propaganda purposes, and I imagine they might have wanted to use tapes of Zubaydah praising Christian Jesus as a way to discourage Al Qaeda rank and file. Is that what this statement is in there for?

The tapes were meant chiefly as an additional, internal check on the program in its early stages. At one point, it was thought the tapes could serve as a backstop to guarantee that other methods of documenting the interrogations-and the crucial information they produced-were accurate and complete. The Agency soon determined that its documentary reporting was full and exacting, removing any need for tapes. [Can you imagine? No need for actual video and audio recordings of this vital gathering of "crucial information." No need for future trials, future investigations, future training, future investigations, etc.] Indeed, videotaping stopped in 2002. *This is, I'm fairly certain, a bald-face lie. As scribe points out, the Gitmo manuals describe videotaping. As I pointed out in my timeline, the Administration was tweaking their policies on photos and videos all through 2005, and we know that Padilla's interrogation was taped because they lost a tape of his from 2004. I think Hayden tells this lie because his claim that they destroyed the tapes bc they no longer needed them depends on it.*

As part of the rigorous review that has defined the detention program, the Office of General Counsel Note the Office of General Counsel probably means "John Rizzo," who is not exactly the guy you want to exercise oversight over your torture program. examined the tapes and determined that they showed lawful

methods of questioning. The Office of Inspector General also examined the tapes in 2003 as part of its look at the Agency's detention and interrogation practices. [And it "determined," what, exactly? Did the IG say?: "Yeah, sure, go ahead and destroy the only primary evidence of my investigation."] Beyond their lack of intelligence value-as the interrogation sessions had already been exhaustively detailed in written channels [think about that – the U.S. government claiming that video "lacks value" once it is described in detail in a written version. Let's just hope that's not business-as-usual at the CIA. Yup, Jim, I've written down what was in those photos; you can throw them out now."]-and the absence of any legal or internal reason to keep them [hmm . . . legal or internal . . . interesting use of adjectives], the tapes posed a serious security risk. Were they ever to leak, they would permit identification of your CIA colleagues who had served in the program, exposing them and their families to retaliation from al-Qa'ida and its sympathizers. [Surely such identities could be redacted or hidden, no? Is it SOP for the CIA to destroy all its records containing agents' identification, because of the prospect that they might one day be leaked?]

These decisions were made years ago. [Note the passive voice.] But it is my responsibility, as Director today, to explain to you what was done, and why. What matters here is that it was done in line with the law. [And where, exactly, is that law explaining how an agency can destroy evidence of possible wrongdoing?] Over the course of its life, the Agency's interrogation program has been of great value to our country. It has helped disrupt terrorist operations and save lives. It was built

on a solid foundation of legal review.
[Oh, so that's what they call the August
2002 OLC torture memo.] It has been
conducted with careful supervision. If
the story of these tapes is told fairly,
it will underscore those facts.

Mike Hayden

Given how obvious it is that the CIA destroyed
these tapes because they didn't want to be held
legally responsible for torture, this letter
must really sound ridiculous to those at the CIA
who don't want to be known as torturers.