


# **CIA MET WITH WHITE HOUSE ABOUT HOW TO RESPOND TO JANE HARMAN'S TORTURE WARNINGS**

We've known for years that when Jane Harman asked Scott Muller in 2003 whether the President had authorized torture, he basically blew her off. But we now know that Muller consulted with the White House about how to respond to her.

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## **TORTURE TAPE DESTRUCTION ACCOUNTABILITY: HOW IT IS DONE**

 When the government possesses videotape evidence of the torture of subjects under its dominion and control, there is only one reason to destroy the tapes. That reason is not because they possess no evidentiary value; in fact it is the direct opposite, it is because they are smoking guns. Videotapes are definitive for one of the two sides; they either prove the subject was tortured, or they prove that he was not.

Either way, videotapes of detainee treatment are of paramount evidentiary value where there are allegations of torture. It would be insane to argue that such tapes have "no possible evidentiary value"; yet that is exactly what the United States government has officially claimed as their rationale with respect to the infamous destruction of the "torture tapes" depicting the

treatment of detainees Abu Zubaydah and Abd al-Rahim al-Nashiri. The tapes were wantonly destroyed by the CIA in 2005, news of the destruction became public via a December 6, 2007 article in the New York Times and the DOJ specially assigned a prosecutor, John Durham, at the end of December 2007.

In the nearly two years that have elapsed since the appointment of Durham, he and the crack US Department of Justice have apparently not been able to find anything wrong with the destruction of the torture tapes. But, once again, US Federal courts have demonstrated the dithering perfidy of the Executive Branch, whether it be that of George W. Bush or, in many key Constitutional respects, his clone, Barack Obama.

From the Kansas City Star:

A Missouri prison inmate claims he was restrained for 17 hours without breaks to get a drink of water or use the bathroom.

But videotape that could prove or disprove Darrin Scott Walker's allegations of abuse cannot be found.

And a federal judge this week concluded that prison officials intentionally destroyed the tape "in a manner indicating a desire to suppress the truth."

U.S. District Judge Richard Dorr made the ruling in a lawsuit Walker filed alleging that he was subjected to cruel and unusual punishment.

The case is Darrin Scott Walker v. Michael Bowersox, and is filed in the Western District of Missouri (WDMO) in Case No. 05-3001-CV-S-RED. Here is a copy of Judge Dorr's Order.

First off, it should be noted that as bad as the alleged torture of *Walker* is, it is nowhere near the the sadistic and egregious conduct performed

upon Zubayduh and al-Nashiri. Secondly, in *Walker*, the court was confronted with a tape that was “lost”, maybe taped over. In the cases of Zubayduh and al-Nashiri, the US government, with malice aforethought, wantonly and intentionally physically destroyed the evidence; light years worse conduct than that in *Walker*. Yet Judge Dorr blistered the state for its acts in destruction of evidence:

For all of the following reasons, this Court agrees with Walker that the videotape was intentionally destroyed in a manner indicating a desire to suppress the truth. The prison had adopted a policy that required episodes on the restraint bench be videotaped. The Defendants offered no explanation of what happened to the tape, other than the fact the tape could have been taped over, which indicates intentional destruction. The videotape was delivered to a responsible person for safekeeping by people who believed the videotape should have been kept in case of litigation. The Defendants were on notice to keep the videotape because prison officials knew Walker was considering a lawsuit the night of the incident. Lastly, the loss or taping over of the videotape was not a first time incident.

You have to wonder what Judge Dorr would think of the acts of Jose Rodriguez, the CIA and the highest levels of authority in the Executive Branch in destroying the “torture tapes” if this was his opinion in *Walker*. Dorr went on to hold that there should be a presumption that the destroyed tape was negative to the interests of the government in *Walker* and cited strong authority for said holding.

The *Walker v. Bowersox* case, and the strong foundation it is based on, just adds to the curiosity of the lack of ability of John Durham to find addressable conduct in the case of the

torture tapes. Granted, one is a civil rights lawsuit, and one is a criminal investigation for obstruction, but the theory of culpability is the same.

Hey John Durham, where are you and what say you? Or are we just going to be peddled a bunch of Bull by Durham?

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## THE CIA'S FIVE LIES

As a number of you have pointed out, the House Intelligence Committee have revealed preliminary results of its investigations into the CIA's lies and found—wait for it—the CIA lies.

In a hearing of the House Intelligence committee this afternoon, Reps. Anna Eshoo and Jan Schakowsky, both Democrats, pointed to at least five instances going back to at least 2001 in which the C.I.A. withheld information from or lied to Congress.

Those five lies are:

1. Lies about torture (to Pelosi)
2. The assassination program that started this probe
3. The Peruvian plane shoot-down that got Crazy Pete Hoekstra on board
4. The destruction of the torture tapes
5. ???

So, first of all, I'm wondering where number 5 is—I'll follow up tomorrow on that. Was this hearing designed to let CIA know that HPSCI was

going to reveal number 5, or did they do so today?

But I'm interested in the inclusion of the torture tape destruction. Is HPSCI asserting that CIA lied about the destruction of the tapes ... which would imply that the Committee asked about it in the first place? (I'll remind you that when the tapes were destroyed, Jane Harman was still on the committee making a stink about the CIA's other lies about torture)? Or is the Committee just including the torture tape destruction as one misrepresentation among others?

Update: Here's how The Hill describes it (and they, too, list just four lies).

In addition, the CIA may have failed to properly notify Congress about the 2005 destruction of videotapes recording the interrogation of al Qaeda operatives by intelligence officials, Eshoo and Schakowsky said.

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## **CIA OIG'S WILD PARSING ABOUT WHAT WAS "DEPICTED" ON THE TORTURE TAPES**

Back in January 2008, the CIA's OIG claimed it did not launch its investigation into torture in response to an allegation of wrongdoing. But that's not what the IG Report itself said.

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# **WILKERSON ON DURHAM'S INVESTIGATION**

There's a number of bread crumbs to suggest that the Durham investigation will net the lawyers.

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# **HIDING AL-NASHIRI'S TORTURE**

I've been saying for over 18 months that the IG Report was the precipitating factor in the CIA's decision to destroy the torture tapes. It looks increasingly like I was right.

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# **NYT NEGLECTS TO MENTION FOGGO AND THE TORTURE TAPES**

There's a keystone to understanding the story from David Johnston (who frequently regurgitates highly motivated leaks) and Mark Mazzetti (CIA's guy at NYT) on Dusty Foggo's role in setting up the black sites run by the CIA: Foggo's testimony in the torture tape investigation.

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# **ACLU TORTURE TAPE WORKING THREAD**

New filings by the ACLU. Dissect and discuss. [Here](#) and [Here](#).

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## **CIA STICKS WITH ITS WATERBOARDING SHINY OBJECT STRATEGY**

The CIA argues that they're not claiming the torture documents are classified because they're trying to hide a crime, but argue at the same time that the descriptions of the techniques as practiced have to remain classified because they're not the same as the abstract descriptions.

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## **WHY THE CIA WOULD WANT TO HIDE MAY 2002 FROM JUDGE HELLERSTEIN (AND THE ACLU)**

I've had a couple of really weedy posts examining the CIA's response to the torture FOIA (Cherry-Pick One, Cherry-Pick Two, FOIA Exemptions). And I wanted to pull back a bit, and explain what I think they might mean.

We're getting all these documents because the CIA is trying to avoid being held in contempt

for not revealing the now-destroyed torture tapes in a response to this FOIA in 2004.