

DID THE D.O. LAWYER EVEN KNOW ABOUT BRINKEMA'S REQUEST?

While it has clear Isikovian blind spots—like the rather obvious coincidence between the terror tapes timeline and the events in Leonie Brinkema's courtroom—there are some interesting tidbits in this Isikoff-Hosenball article on the "paper trail" of the decision to destroy the torture tapes. Most importantly, it sounds like the Directorate of Operations lawyer who purportedly authorized the destruction of the tapes only said there was no legal reason not to do so.

Included in the paper trail is an opinion from a CIA lawyer assigned to the Clandestine Service that advises that there is no explicit legal reason why the Clandestine Service had to preserve the tapes, according to both former and current officials. The document does not, however, directly authorize the tapes' destruction or offer advice on the wisdom or folly of such a course of action, according to a source familiar with its contents, who declined to be identified discussing the controversial topic.

Which suggests this lawyer had no fucking clue that Judge Leonie Brinkema had asked the government about such tapes explicitly, within weeks of the time when the tapes were destroyed. I'm guessing that was by design—the only way they could figure out how to get a legal opinion defending the indefensible, the destruction of evidence.

Apparently, the tapes themselves never entered this country.

But the tapes themselves were never brought onto U.S. territory; they were

kept, and later destroyed, at a secret location overseas.

But an electronic copy of the tapes did. Isikoff and Hosenball's source claims there's no reason to believe that electronic copy still exists.

At one point portions of the tapes were electronically transmitted to CIA headquarters in Langley, Va., so a small number of officials there could review them. A counterterrorism source, who also asked for anonymity when discussing this subject, said that there was no reason to believe that any recordings of such an electronic feed still exist.

Uh huh. Sure there's not.

The article presents conflicting views on the role of John Rizzo (and it refutes claims made elsewhere that Rizzo was unaware of the tapes' destruction).

Throughout the same period, said one of the former officials, a senior CIA lawyer, John Rizzo, now the agency's acting general counsel, was also conducting discussions on what to do with the tapes with White House lawyer Harriet Miers. Two sources said that Rizzo also discussed the issue with officials at the Justice Department, which had issued classified guidelines outlining how the CIA's interrogation program should operate.

[snip]

Current and former officials familiar with Rizzo's views said he was never comfortable with the idea of the tapes being destroyed. But Clandestine Service officials involved in the matter believe they never got explicit instructions from him to preserve the tapes.

If I had to wild-arse-guess, I'd say Rizzo is going to take the fall for this. And I think he knows that. After all, it's always the firewall protecting top aides in the White House who takes the fall.

And in case the CIA's many leakers this week haven't already made it abundantly clear that they're going to pin responsibility on the White House for the torture, they make it explicit here.

The reason CIA officials involved the White House and Justice Department in discussions about the disposition of the tapes was that CIA officials viewed the CIA's terrorist interrogation and detention program—including the use of "enhanced" interrogation techniques—as having been imposed on the agency by the White House. "It was a political issue," said the former official, and therefore CIA officials believed that the decision as to what to do with the tapes should be made at a political level, by Miers—a former personal lawyer to President Bush and later White House staff secretary and counsel—or someone else directly representing the president. [my emphasis]

I'm really fascinated by this point, because it portrays Harriet's involvement as political, not legal. Given the timing, that would be the most likely scenario (Harriet didn't become White House Counsel until 2005, so the early negotiations on this occurred when she was in a non-legal role.) But that raises the question of whether Bush got any legal advise about destroying the tapes. Was AGAG involved, at either the White House or DOJ or both? Or is the destruction of evidence in this Administration considered a non-legal matter?