

TIMING, AGAIN

Marty Lederman points out that today's NYT story clarifies one of the issues I've been trying to pinpoint on timing.

If the CIA had destroyed its interrogation tapes during the pendency of the 9/11 Commission investigation, that almost surely would have constituted felony violations of 18 U.S.C. 1512(c)(1). So they retained the tapes during that investigation. However, as the *New York Times* reports tomorrow, the CIA very carefully avoided informing the 9/11 Commission of the existence of the interrogation tapes – which would have been extremely valuable information for the Commission to use. "A C.I.A. spokesman said that the agency had been prepared to give the Sept. 11 commission the interrogation videotapes" . . . but the Commission never said the magic words!: The Commission sought "documents," "reports" and "information" related to the interrogations from the CIA – but "staff members never specifically asked for interrogation videos."

[snip]

Here's the really amazing bit, however: "Because it was thought the commission could ask about the tapes at some point, they were not destroyed while the commission was active," said a CIA spokesperson.

Then, as soon as the Commission issued its report and closed up shop, the CIA quickly destroyed the evidence, precisely because there was no longer any proceeding pending (and arguably no foreseeable proceeding that would trigger 1512(c)(1) culpability, although that is far from certain).

This tactic may be familiar to you from your youth. I know when I was four or five, I used to parse parental requests very narrowly so as to rationalize behavior I knew to be wrong. By the time I tried it in Middle School, though, it was no longer considered a valid dodge and I got busted by teachers and school administrators (though it still worked to legalize gum chewing in Algebra class). But I guess those rules are different for the Bush Administration when they're trying to hide their torturous ways.

If Marty is correct that the CIA held onto the tapes until the 9/11 Commission finished and then found a period to destroy them (apparently in the time period between when Leonie Brinkema asked if there were tapes and they said no), then it may explain why the public reports on when the White House weighed in on matters are so dodgy. The NYT claims that Addington, Gonzales, and Bellinger were involved in 2003. But the memo documenting their involvement (and, at least Gonzales' and Bellinger's opposition to the destruction of the tapes) dates to 2004. I'm guessing, from this general dodginess, that we'll find some members of this White House crowd all of a sudden expressing robust support for destroying the terror tapes at a time when it became legally comfortable to do so.