

CIA AND BUSHCO HAVE A RATHER LARGE CRIMINAL OBSTRUCTION PROBLEM: THE TORTURE TAPES COME HOME TO ROOST

By now, the story of the CIA's destruction of the "torture tapes" is well known. Although the problems with the CIA, and every other portion of the Bush Administration, maintaining custody and control of evidentiary video and audio tapes is literally almost a running bad joke, the capstone revelation came with a December 6, 2007 New York Times article by Mark Mazzetti. Mazzetti's article detailed the willful destruction by the CIA of videotapes directly exhibiting the use by US Agents of "extreme interrogation techniques" on detainees Abu Zubaydah and Abd al-Rahim al-Nashiri.

To refresh your recollection of the entire sequence of events on the Torture Tapes, here is a remarkably complete timeline. For the instant consideration, the critical event is the evidence supplied to date by the Bush Administration, and most significantly the CIA, on their rationale for the destruction of the Zubaydah and al-Nashiri tapes. The initial statement of the position and defense of the CIA is contained in CIA Director Michael Hayden's message to the body of his agency, which indicates:

...CIA videotaped interrogations, and destroyed the tapes in 2005. I understand 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.

The official position has been further refined by testimony of CIA Acting General Counsel John Rizzo and the pseudo-proffer of Jose Rodriguez via his attorney Bob Bennett. We also know that, at a minimum, four White House lawyers were involved in discussion of the proposed destruction of the tapes. The most recent evidence of the government's position is contained in sworn statements by CIA officials made in mid-April in the Rashid Abdullah case, again positing nothing but good faith and lack of knowledge of any compelling reason to preserve the tapes.

However, yesterday, an insufficiently noticed page A-16 story by Dan Eggen in the Washington Post, appears to put the lie to the defenses the Administration has posited to date and raise serious issues in relation to intentional, malicious destruction of evidence and obstruction of justice. The Post article relates information gleaned from recent CIA/Administration filings in a Freedom of Information Act lawsuit filed last June. From the Post:

The CIA concluded that criminal, administrative or civil investigations stemming from harsh interrogation tactics were "virtually inevitable," leading the agency to seek legal support from the Justice Department, according to a CIA official's statement in court documents filed yesterday.

The CIA said it had identified more than 7,000 pages of classified memos, e-mails and other records relating to its secret prison and interrogation program, but maintained that the materials cannot be released because they relate to, in part, communications between CIA and Justice Department attorneys or discussions with the White House.

Well, that's interesting. It turns out that the CIA and the Bush Justice Department, the vaunted

OLC no less, knew full well that the tapes were directly and specifically material and germane to "inevitable criminal, administrative or civil investigations". Oops, now that is a little different than the initial stories pitched by the Administration isn't it? And exactly how specific and deep was the knowledge of the critical materiality of the Torture Tapes? Again, from Eggen:

The documents indicate that lawyers at the CIA and elsewhere were aware that CIA personnel might be subject to criminal prosecution or other legal sanctions.

...

The records submitted to the court list and briefly describe dozens of communications between the CIA and the Justice Department's Office of Legal Counsel, or OLC. At least 10 were in 2004, five were in 2005, and seven were in 2006; virtually all were classified "top secret" or even more restricted.

"The CIA's purpose in requesting advice from OLC was the very likely prospect of criminal, civil, or administrative litigation against the CIA and CIA personnel who participate in the Program," said a declaration from Ralph S. DiMaio, information review officer for the CIA's clandestine service. He added that the CIA considered such proceedings "to be virtually inevitable." (Emphasis added).

It appears as if the new declarations in the FOIA lawsuit pretty much obliterate any Bush Administration pretensions of good faith belief that there was no reasonable materiality, nor potential evidentiary value, in the Torture Tapes. Correspondingly, the new declarations almost completely solidify allegations of a plethora of substantial crimes including obstruction of justice, obstruction of Congressional process, false statements to

Congress, false material statements to multiple Federal courts, destruction of evidence of a governmental crime, conspiracy and, of course, torture/war crimes. I suspect we will be discussing the specific circumstances and elements of the individual crimes quite soon.

And to think, CIA Director General Michael Hayden, he of all the exculpatory lip service from the outset about no evidentiary value of the tapes, has just announced his formal retirement from the Air Force for "practical considerations related to military retirement." I'll bet. The move appears to almost double his salary because now he can collect both his retirement pension, which will now be locked in (in case, you know, anything bad happens), *and* a civilian salary for his position. Will more sudden "personal employment considerations" be taken by additional Administration officials?

For anybody paying attention, the "Snowball" of Bush Administration culpability has been gathering both mass and momentum in it's downhill run for quite some time now. In any rational and legitimate period of American democracy, the snowball would have overwhelmed Nancy Pelosi's barren, empty table; but not in this day and age of derelict Democratic House Leadership. No, the current House Leadersheep have the mistaken notion that their oath to office demands that they protect the most corrupt and criminal Presidential Administration in history, instead of the Constitution of the United States of America. They are wrong; the sole demand of their oath of office is to "support and defend the Constitution of the United States".