

HOW A REVIEW GETS TO GRAND JURY IN FIVE DAYS OR LESS

Update: Several people have corrected me that contextually this paragraph refers to the torture tape investigation, not the torture investigation. I think it's still a good sign, but may not yet reflect on the torture investigation.

Although I have publicly suggested that Holder's selection of John Durham as Special Counsel to investigate torture sets an upper limit on the seniority of those who might be targeted (because you don't want an AUSA indicting, say, the former Acting Counsel of CIA), I did hold out one hope that Durham's selection was a good sign. After all, Durham has already been investigating why Jose Rodriguez and others destroyed a bunch of tapes portraying the abuse of Abu Zubaydah and Rahim al-Nashiri. We know Zubaydah's torturers exceeded the limits of the Bybee Two memo when they waterboarded him. And we know al-Nashiri's torturers threatened him with drills.

So there was the possibility that Holder's selection of Durham effectively amounted to an expansion of Durham's earlier mandate, from an investigation of the destruction of evidence of abuse to an investigation of the abuse itself.

Which is why I'm so interested in a passage that Jason Leopold pointed to in the Walter Pincus story reporting that CIA will pay for CIA officers' legal fees (the article doesn't really say whether CIA will pay for contractors' legal fees).

In that investigation, Durham has asked agency contractors to give testimony before a grand jury in Alexandria next month, according to three sources familiar with the matter. It is not clear that the witnesses will testify.

Durham has been officially investigating the torture itself (as opposed to the torture tape destruction) for just four days. And his mandate is—at least officially—just a review of the earlier cases. Yet he's already scheduling testimony before the grand jury next month?

I'm no lawyer (but bmaz is, and he agrees with me, and he's even a bigger skeptic than I am), but there is no way Durham would be scheduling testimony before a grand jury that didn't significantly arise from his earlier mandate. So these contractors are—at a minimum—almost certainly tied to the abuse of al-Nashiri, and might be tied to the abuse of Abu Zubaydah.

The torture apologists are wailing that there's no reason to reopen investigations that—they claim—were already completed by DOJ. But it appears that one reason to do just that is that CIA destroyed evidence they knew to be abusive and the scrutiny of that act has resulted in sufficient evidence to go after the torturers directly.