

WILKERSON ON DURHAM'S INVESTIGATION

A number of you have pointed to Andy Worthington's detailed interview with Lawrence Wilkerson. You should read the whole thing, if only to see Wilkerson tee up on Crazy Cheney.

But the part I found most interesting is this bit:

Lawrence Wilkerson: No. My wife thinks that ultimately there's going to be something. I'm a little more cynical than she, but she's convinced that this investigation that's been going on [by John Durham] – very low-key, the guy's very persistent, he's very determined, he reminds me of [Patrick] Fitzgerald on the Valerie Plame case, and his starting point is the destruction of the videotapes, and I'm told he's got a plan, and he's following that plan, and I'm told that plan is bigger than I think. [my emphasis]

While I was on the record as saying Durham's appointment probably meant the torture investigation would never go after John Yoo or John Rizzo or Addington (because it would be harder for an AUSA to go after so senior an official), I also said there's one scenario in which Durham's appointment could be a good sign. That's if the evidence Durham had discovered in the torture tape investigation was part of the new information that merited reopening investigations into torture itself that—even credible people seem to think—has already been investigated.

Now, there are a few more breadcrumbs that suggest the lawyers may be as much a focus of this as the torturers. When Eric Holder announced the investigation, for example, he

described the two inquiries as related and Durham's mandate as expanded.

Assistant United States Attorney John Durham was appointed in 2008 by then-Attorney General Michael Mukasey to investigate the destruction of CIA videotapes of detainee interrogations. During the course of that investigation, Mr. Durham has gained great familiarity with much of the information that is relevant to the matter at hand. Accordingly, I have decided to expand his mandate to encompass this related review.

Then there's the detail that Holder decided he had to do an investigation after reading not just the torture memos and the IG Report, but also the OPR Report.

But, then, Holder decided to take a close, personal look at the issues, and his perspective began to change. Holder is said to have been closely engaged with three sets of documents—a group of memoranda from the Bush-era Office of Legal Counsel, since repudiated by the Justice Department; the report of the Office of Professional Responsibility on these memoranda, which has been on his desk, awaiting review and release for months; and the report of the CIA's inspector general reviewing in great detail the actual techniques used, guidance given by the Justice Department, and results or lack of results obtained.

Holder released the first set of memoranda and his Justice Department publicly suggested that it would release both the related report and the CIA inspector general's report—often viewed as the Rosetta Stone of the torture controversy. As he read through the latter two documents, my sources said,

Holder came to realize the focal and instrumental role that Department of Justice lawyers had played in constructing the torture regime and in pushing it through when career lawyers raised objection. He also took note of how the entire process was orchestrated from within the Bush White House—so that more-senior lawyers in Justice, sometimes even the attorney general, did not know what was being done. And he noted the fact that the United Nations Convention Against Torture, to which the United States is a party, requires that a criminal inquiry be undertaken whenever credible allegations of torture are presented. [my emphasis]

Finally, recall that Holder announced the investigation only after the new head of the Office of Professional Responsibility recommended doing so.

The Justice Department's ethics office has recommended reversing the Bush administration and reopening nearly a dozen prisoner-abuse cases, potentially exposing Central Intelligence Agency employees and contractors to prosecution for brutal treatment of terrorism suspects, according to a person officially briefed on the matter.

[snip]

The Justice Department's report, the most important since Mr. Holder took office, was submitted by Mary Patrice Brown, a veteran Washington federal prosecutor picked by Mr. Holder to lead the Office of Professional Responsibility earlier this year after its longtime chief, H. Marshall Jarrett, moved to another job in the Justice Department.

There has never been any public

explanation of why the Justice Department decided not to bring charges in nearly two dozen abuse cases known to be referred to a team of federal prosecutors in Alexandria, Va., and in some instances not even the details of the cases have been made public.

[snip]

It has been known that the Justice Department ethics report had criticized the authors of the legal opinions and, in some cases, would recommend referrals to local bar associations for discipline.

But the internal inquiry also examined how the opinions were carried out and how referrals of possible violations were made – a process that led ethics investigators to find misconduct serious enough to warrant renewed criminal investigation.

Now, I admit at the time that I thought Brown's recommendation might have served as cover and nothing more. But consider what this means. Brown picked up the OPR investigation from Marshall Jarrett (whom Holder quickly sidelined to another office at DOJ). According to this NYT article, the investigation focused not just on the torture memos, but also how criminal referrals were made. And that's the detail—at least according to the NYT—that led Brown to recommend Holder open up an investigation.

Something about the way the Bush lawyers referred these investigations led those investigations to end inconclusively—and it's that something that Durham seems to have in mind as he pursues the torture violations themselves.

So maybe Wilkerson's sources are right. Maybe Durham (and Brown and Holder) do have a plan.