

THE TIMING OF THE RAMZI BIN AL-SHIBH TAPES

I wanted to point out two details of timing on the Ramzi bin al-Shibh tapes:

- The tapes were made after CIA started getting worried about making interrogation tapes
- The tapes were disclosed after the CIA started trying to figure out what happened to the Abu Zubaydah tapes

The tapes were made after CIA already started getting worried about making interrogation tapes

The AP says the tapes were made while al-Shibh was in Morocco for the first time—sometime between September 17, 2002 and March 7, 2003.

When FBI agents finally had a chance to interview Binalshibh, they found him lethargic but physically unharmed. He projected an attitude suggesting he was unconcerned he had been caught.

Before the FBI made any real headway, the CIA flew Binalshibh on Sept. 17, 2002, to Morocco on a Gulfstream jet, according to flight records and interviews.

Current and former officials said this was the period when Binalshibh was taped. His revelations remain classified but the recordings, the officials said, made no mention of the 9/11 plot. It's unclear who made the tapes or how they got to the agency's Langley, Va., headquarters.

In March 2003, Binalshibh was moved to a Polish facility code-named Quartz soon after his mentor, Mohammed, was nabbed in Pakistan.

This would mean al-Shibh arrived in Morocco (and therefore the tapes were made) sometime after some people met at Langley and decided they should destroy the Zubaydah tapes.

On 05 September 2002, HQS elements discussed the disposition of the videotapes documenting interrogation sessions with ((Abu Zubaydah)) that are currently being stored at [redacted] with particular consideration to the matters described in Ref A Paras 2 and 3 and Ref B para 4. As reflected in Refs, the retention of these tapes, which is not/not required by law, represents a serious security risk for [redacted] officers recorded on them, and for all [redacted] officers present and participating in [redacted] operations.

[snip]

Accordingly, the participants determined that the best alternative to eliminate those security and additional risks is to destroy these tapes [redacted]

The CIA appears to have already been manipulating briefing records, possibly to give the appearance of Congressional support for either the program or the destruction of the tapes.

Note, too, that there are only two video tapes (plus the "audio" tape I've raised questions about here). If the audio tape were, in fact, just an audio tape, that would leave two video tapes. Which is how many tapes existed of Rahim al-Nashiri's interrogations, at least by the time they did the inventory. That's presumably because al-Nashiri was taken into CIA custody after the point when—on October 25, 2002—HQ told

the Thai black site to record over tapes every day.

It is now HQS policy that [redacted] record one day's worth of sessions on one videotape for operational considerations, utilize the tape within that same day for purposes of review and note taking, and record the next day's sessions on the same tape. Thus, in effect, the single tape in use [redacted] will contain only one day's worth of interrogation sessions.

Now we know they kept two (or maybe three) tapes for al-Nashiri (presumably taking notes off one day's tape while the other was being used to record new interrogations) because the tape inventory shows the following:

Detainee #2

[Tape] 91 [Redacted]tape and rewind #2

[Tape] 92 3 [Redacted] use and rewind #3
[redacted] final

While obviously we have no such inventory showing the al-Shibh tapes, it is possible that they were used in the same manner as the al-Nashiri tapes were—to collect just one day's worth of interrogation to assist in transcription or note-taking. (And remember, ultimately there were transcriptions made of the al-Shibh tapes, though we don't know when that happened). It's possible then—though this is just a wildarsed guess—that the existence of just three tapes suggests they were started after HQ decided to tape over tapes (so after October 25), or that they first implemented the policy for al-Shibh sometime before October 25.

Also note the content of the last three—presumably chronologically—tapes of Abu Zubaydah. Tapes 89 and 90 are “use and rewind” #1 and #2. But the tape just before that—tape 88—has “no video but there is sound.” Thus, the

last three tapes from Abu Zubaydah consist of two video tapes and one "audio" tape, just like the three tapes from al-Shibh.

If in fact the 2-3 al-Shibh tapes only include the last days of his interrogation on which taping was used, then the AP source's claim that they simply show him sitting in a room being interrogated doesn't mean that the tapes contained no forensic evidence of something else—more abusive interrogations that happened on earlier days. After all, the tapes would no longer "show" what had happened during earlier interrogation sessions.

One more note about this early period. One question the AP raises is when and how the tapes were moved from Morocco to Langley.

It's worth remembering that the Zubaydah and al-Nashiri tapes were also moved at one point. In a cable from HQ to the field (we know this from Vaughn Indices that described this cable before it was released) written on December 3, 2002, just days after John McPherson reviewed the torture tapes and presumably discovered they had been tampered with, someone says:

It was a mistake to move [redacted] tapes [redacted] in light of Ref C guidance.

Notably, given that this refers to tapes being moved in the past tense on December 3, this may suggest the tapes were moved from the black site before it was finally closed. Mind you, the detail may be completely irrelevant to al-Shibh's tapes, but they do suggest people in the field were moving tapes without clear approval from HQ.

The tapes were disclosed after the CIA started trying to figure out what happened to the Abu Zubaydah tapes

As I noted here, the story the AP's sources told (that a person stumbled across a box under a desk with all three al-Shibh tapes in it) and

the story DOJ told Leonie Brinkema (that they learned first of one tape, and then, after asking CIA to make sure there were no more) differ in key ways.

But that difference gets all the more interesting given indications that CIA was trying to figure out what had happened to the Zubaydah tapes in precisely the same time period. Here's how the chronology works (with some potentially-related personnel moves included):

August 27, 2007: Alberto Gonzales resigns

September 13, 2007: A CIA attorney notifies DOJ of the existence of one of the al-Shibh tapes

September 14, 2007: CIA reports Michael Sulick will replace Jose Rodriguez

September 17, 2007: Bush nominates Michael Mukasey Attorney General

September 19, 2007: DOJ reviews the al-Shibh tape and compares it to the transcript; DOJ subsequently asks CIA to check to see if there were more tapes and to provide the cables they had reviewed as part of the discovery review

September 25, 2007: White House withdraws John Rizzo's nomination to be CIA General Counsel in response to pressure from Democrats about the legality of torture methods

September 25, 2007: A CIA email reports:

Below is the information for the cable granting approval to destroy the [redacted] tapes

DIRECTOR [redacted]

Document Date: 08 NOV 2005

File Number [redacted] – No clue about this file number, searched in

[redacted] with zero returns.

Subject: EYES ONLY FOR [REDACTED] –
DDO APPROVAL TO DESTROY
[REDACTED]VIDEO TAPES

September 30, 2007: Rodriguez' last day
at CIA

October 5, 2007: Someone forwards, with
no comment or explanation, the September
25 email searching for the destruction
approval cable

October 15, 2007 (roughly): A group of
conservatives test Michael Mukasey on
whether or not torture is illegal

October 18, 2007: DOJ reviews the second
and third al-Shibh tape

October 18, 2007: In confirmation
hearings, Michael Mukasey refuses to say
waterboarding is torture

October 25, 2007: DOJ informs Leonie
Brinkema of factual errors in two
declarations submitted in Moussaoui case

November 8, 2007: Mukasey confirmed as
Attorney General

Mind you, we don't know how long after CIA
discovered the first al-Shibh tape they told DOJ
about it. But the known dates show that CIA told
DOJ about just one of three tapes the day before
CIA announced publicly that Rodriguez would be
leaving (I think one possible explanation for
the discovery of the tapes is just that they
were discovered in boxing up Rodriguez' worldly
belongings). The fact that a CIA lawyer revealed
the singular tape to DOJ is all the more
intriguing given that it occurred at about the
same time as Rizzo—then Acting General
Counsel—had to withdraw his nomination because
of his role in approving torture (and
potentially, in covering it up); was he the
lawyer who told DOJ about the al-Shibh tapes?
And again, though we don't know the actual date

when CIA told DOJ there were two more tapes, in what appears to be the interim period, someone at CIA started looking for the cable approving the destruction of the Zubaydah tapes, without much immediate luck (though presumably they would have at least hints of Rodriguez' central role in destroying the tapes).

Given how all this coincides with Alberto Gonzales' resignation and his replacement by Michael Mukasey, it is possible that the September 25 and October 5 searches for the torture tape destruction approval were a response to a DOJ request—either in conjunction with their preparation to reveal the al-Shibh tapes to Brinkema, or possibly in conjunction with another inquiry. (Note, OPR first got copies of the Combine and CAT OLC memos on August 29, so for some reason new torture information was being shared at DOJ at precisely this time). But it certainly seems possible that DOJ first learned of the destruction of the Zubaydah tapes as they learned about the al-Shibh tapes, such that when DOJ told Brinkema that CIA's review was complete, they included within that the Zubaydah tapes.

Aside from suggesting that the al-Shibh videos may have been tied to a more general early inquiry into the destruction of the torture tapes (one presumably stymied by Michael Mukasey, who had had to promise to do no torture investigation in order to be appointed AG), it raises questions about the declaration to Brinkema. It's worth looking at the hedged language DOJ used in their October 25 letter:

The Government respectfully submits this letter to inform the Court that two ex parte declarations previously submitted by the Central Intelligence Agency ("CIA") in this case contain factual errors concerning whether **interrogations of certain enemy combatants** were audio or video recorded.

[snip]

We are unaware of recordings **involving the other enemy combatant witnesses at issue in this case** [half line redacted].

[snip]

After learning of the existence of the first video tape, we requested the CIA to perform an exhaustive review to determine whether it was **in possession** of any other such recordings for **any of the enemy combatant witnesses at issue in this case.**

[snip]

1 [redacted] was one of the enemy combatant witnesses whom Moussaoui wanted to call to testify on his behalf; [two lines redacted]

[snip]

The fact that audio/video recording of enemy combatant interrogations occurred, and that the United States was in possession of three of those recordings is, as noted, inconsistent with factual assertions in CIA declarations [dated May 9, 2003 and November 14, 2005]

Start with the final passage: "audio/video recording ... occurred" and the US was "in possession of three of those recordings." This language would be consistent with knowledge of the Zubaydah tapes, provided that the person making the statement knew they had been destroyed. As to the rest of it, look how carefully DOJ seems to emphasize Moussaoui's focus on al-Shibh's interrogations. The redactions noted here may include a reference to Zubaydah or al-Nashiri. Or it may be that DOJ was simply very careful to always caveat those statements to refer to the enemy combatants that Moussaoui had asked about by name by the May 2003 declaration.

In any case, it sure seems to reflect a knowledge on the part of DOJ that someone had

destroyed the torture tapes. And given the identification of the date that destruction was approved—November 8, 2005—DOJ would have known that the tapes had been destroyed days before DOJ told Leonie Brinkema they didn't "have" video tapes of the interrogations at question.

Good thing for the Bush Administration they were able to convince someone already implicated in torture (through the Padilla case) to promise not to investigate torture, huh? Because it sure seems like DOJ already knew of this obstruction when Mukasey took over at DOJ.