

THE DISTINCTION BETWEEN TORTURING ABU ZUBAYDAH AND AL- NASHIRI AND JUST AL- NASHIRI

When Gina Haspel got nominated-by-tweet to be CIA Director, a lot of people pointed to a ProPublica story from last year reporting that Haspel was in charge of the CIA's black site in Thailand from the start of the torture, and that she had taken glee out of Abu Zubaydah's treatment. ProPublica has since retracted that story, based on public clarifications from people like James Mitchell.

The nomination of Haspel this week to head the CIA stirred new controversy about her role in the detention and interrogation of terror suspects, as well as the destruction of videotapes of the interrogation of Zubaydah and another suspect. Some critics cited the 2017 ProPublica story as evidence that she was not fit to run the agency.

Those statements prompted former colleagues of Haspel to defend her publicly. At least two said that while she did serve as chief of base in Thailand, she did not arrive until later in 2002, after the waterboarding of Zubaydah had ended.

The New York Times, which also reported last year that Haspel oversaw the interrogation of Abu Zubaydah and another detainee, Abd al-Rahim al-Nashiri, published a second story this week making the same point. It quoted an unnamed former senior CIA official who said Haspel did not become base chief until late October of 2002. According to

the Times, she was in charge when al-Nashiri was waterboarded three times.

As they note, the story did correctly describe Haspel overseeing the coverup of the tapes.

In response, a lot of human rights activists have argued that it's all the same: torturing one person is still torture, and the corrected story still puts Haspel in charge when Abd al-Rahim al-Nashiri was waterboarded.

But that's not correct in one important way.

The treatment of Abu Zubaydah clearly exceeded the techniques as laid out in the Bybee Memo, both in severity and repetition. We know far less about the specific details of Nashiri's torture *while he was still in Thailand*. We know he was waterboarded three times. And we know that not even Liz BabyDick Cheney (who was torture-splaining John McCain yesterday for his concerns about Haspel) claims that waterboarding elicited useful information from Nashiri.

Nashiri would be treated using techniques, including threats from a drill, not authorized by the Bybee Memo, but that happened after he got shipped out to the next black site. There's no currently public reason to believe Haspel was involved in that treatment.

So, while we can say with certainty that whoever tortured Zubaydah at the Thai black site and whoever oversaw it cannot claim to be relying on the OLC authorization to torture – because his treatment exceeded what got approved, we can make no such assertion with regards to Nashiri. That's critically important for Haspel's claim that she was just doing what DOJ authorized.

She still did oversee torture. She did oversee the destruction of the torture tapes (with legal sanction from the counterterrorism center's own lawyers). But we don't have evidence she oversaw torture that violated even the expansive guidelines approved by Jay Bybee.