

FINDER IS CIA'S KEEPER IN SLANTED NYT OP-ED

As several here have noted, there is a particularly odious op-ed spinning the CIA torture innocence position in today's New York Times by self professed novelist Joseph Finder:

Mr. Holder doesn't seem concerned that each of these cases was exhaustively reviewed, beginning in 2005, by career prosecutors under the supervision of the United States attorney for the Eastern District of Virginia. Those men had access to the complete, unredacted report of the agency's inspector general, an expurgated version of which was released on Monday. Yet these prosecutors recommended against criminal charges in all but one case. (That exception involved a contractor named David Passaro, who had assaulted a prisoner with a flashlight and kicked him in the groin, shortly after which the prisoner died. Mr. Passaro was convicted of assault and sentenced to eight years in prison.)

Mr. Holder's decision, then, implies that justice wasn't done five years ago probably because high-level officials in the George W. Bush administration put their thumbs on the scale of justice. This seems unlikely. The prosecutors in Virginia were well experienced in dealing with classified intelligence matters, as most of the federal intelligence agencies are in their district. They have a reputation for being hardheaded and unforgiving of C.I.A. transgressions.

Lacking reliable witnesses or forensic evidence, they made the only call they could have made: not to prosecute. In our nation of laws, that's exactly the

way you want government prosecutors to behave. And there is no indication that any of them has complained about being pressured to decide against criminal charges. If any new information has come out about these cases, any complaints about undue influence or any new witnesses, Mr. Holder hasn't mentioned it. The prosecutors in this case had to abide by the Justice Department's ruling, in August 2002, that no agency interrogator would face prosecution for exceeding the guidelines as long as he acted in "good faith" and didn't have "the specific intent to inflict severe pain or suffering." Not an easy distinction to make, surely, when the work you're told to do seems to be designed precisely to inflict pain and suffering.

Fiction worthy of a novel indeed. As you may recall, it was only ten days ago we last ran into Mr. Finder doing what he apparently does best, spinning for the CIA sub-culture and Bush Administration leaders (who Finder swears is not Addington, but rather "someone who's actually smart"). And here he is in a new and bigger forum, the august pages of the Times editorial pages, back at it.

The first 3/4 of Finder's NYT op-ed are a tour de force of spook spin. He makes assumptions out of the blue about the state of evidence and witnesses there is no way in the world he has the first clue about, thinks EDVA supersedes DOJ Main, misrepresents the state of known facts on exceeding of guidelines by interrogators, assumes the relevant detainees were directly related to 9/11 with no evidence whatsoever to support the assertion, and claims to omnisciently and definitively know what a jury would do if deliberating on the case. He also confuses the different criminal referrals made in 2003, in 2004 and 2005; which are significantly different issues given the arrival

of AGAG as well as the departure of John Ashcroft as AG and Mike Chertoff from the Criminal division (we'll get back to Chertoff momentarily). Oh, and Finder doesn't understand squat about the legal concepts of collateral estoppel/issue preclusion and double jeopardy, but proceeds to state to the world that they are controlling (an absurd statement and not even competent speculation).

Perhaps it is appropriate that Joseph Finder considers himself a novelist, in light of the pro-torture fiction he has written in his side job as a national security "reporter". Clearly, reporter is a subjective term in light of Finder's background Jeff Kaye pointed out. Mr. Finder appears to be a card carrying member of the Association of Former Intelligence Officers (AFIO), but says:

I was never on the CIA's payroll. I was recruited by the CIA, but when I got to Langley, they showed me the cubicle where I'd be sitting and translating Soviet economic journals from Russian into English, and I said, "No thanks." That wasn't exactly Jason Bourne stuff...

Finder isn't an intelligence professional, but he pines to play one on the opinion pages of the New York Times. Booyah. I would have been tempted to ask where exactly Finder got his slanted views on all this, but Jason Leopold gave us a hint: Finder has been on the rubber chicken merry go round with Mike Hayden and Mike Chertoff. Must have thought that was a good substitute for talking to actual trial lawyers about how complex things such as estoppel/preclusion would really apply here (they wouldn't; this is pure unadulterated bunk) or how fickle juries are and how only a fool would say with certainty (which is exactly what Finder did) how a jury would rule when he has no idea what the admissible evidence set would be. When you can do the rubber chicken with Mike & Mike, who needs accuracy I guess.

In fairness, Finder does get a little closer to reality toward the end of his piece with the discussion of the inequality of Holder not going after the higher ups and the way the investigation (that would actually be "preliminary review") is currently framed has the appearance of an abu-Ghraib/Lyndie England deal. So there is a minor bit of cogent discussion, assuming you can wade through the initial forrest. But that initial forrest is *very* dense.