

“HIGH SIDE” CABLES AND FOIA RESPONSES

As you’ll no doubt understand over the next week or so, bmaz and I have been comparing the case of David Passaro, the only CIA-related person to be prosecuted for detainee abuse, with what happened in Gul Rahman’s death at the Salt Pit. Passaro, a CIA contractor obviously trained in SERE-based interrogation techniques, was convicted of assaulting an Afghan, Abdul Wali, with his hand, foot, and flashlight, while interrogating him at the Asadabad firebase in Eastern Afghanistan in June 2003.

I’ll have a lot more to say about Passaro’s case in upcoming posts (short story, though, is his defense tested many of John Yoo’s favorite theories and lost). But for now, I wanted to point to two passages in this filing, which requests electronic communications evidence related to Wali’s interrogation and death. One thing it requests are transcripts of satellite phone calls from the Field.

The audio recordings and/or text documentation of the contents of satellite phone calls related to the events which prompted Wali’s surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events. Counsel for Mr. Passaro has learned that CIA operatives and contractors, members of Special Operations forces, and military intelligence units, and members of other governmental agencies (OGA) frequently used satellite phones to communicate from this region of Afghanistan, and that the government maintains voice recordings of all satellite phone calls;

Granted, Afghanistan is apt to be more reliant on Sat Phone calls than—say—Thailand or Poland.

But this request suggests there might be another set of documentation pertaining to (for example) daily authorizations for torture techniques in April and May 2002.

Then there is Passaro's lawyer's suggestion that the government has withheld what is called "high side" message traffic from him.

All message traffic to or from any member of a Special Ops (Special Forces, Delta Force, Navy Seals, etc.) or Military Intelligence unit, or OGA, related to the events which prompted Wali's surrender; his subsequent intake, detention, and questioning; his death; and all investigations into these events. Counsel for Mr. Passaro has learned that members of these units [redacted] and submitted daily situation reports which detailed the detention and questioning of all detainees. Based on our review of the redacted messages the government submitted November 10, 2004, it appears that these messages—classified as "secret" and known as "low-side" traffic—originated from a member of the CIA. Message traffic to and from members of the units specified in this request were typically sent as "high-side" traffic and were sent independent from any CIA messages;

As I understand it, "high side" and "low side" refer to two different communication networks, Joint Worldwide Intelligence Communications System (JWICS) and Secret Internet Protocol Router Network (SIPRNet), respectively (I believe that's what's pictured in the image above). Stuff that's Top Secret or TS/SCI has to go over the JWICS network because it's more secure. And Passaro was complaining that he only got cables that were classified Secret, which, he suggested, meant the government had not turned over the cables that had been sent over JWICS.

Now, I'm more interested in what this means for public disclosures rather than Passaro's case. Many of the cables we've seen referred to in CIA Vaughn Indices refer to Secret, not Top Secret cables. Since we're getting just Secret cables, it suggests the possibility that we're getting just "low side" communications, rather than the most sensitive communications.

The exception to that assertion—the one case where it appears CIA has described a whole bunch of Top Secret cables, actually raises even more concerns. The index of cables back and forth from Thailand to Langley from 2002 appears to show a batch of cables that are almost all Top Secret cables. But recall what Leon Panetta revealed in a footnote last year: that "many" of the cables were actually classified "Secret," but that he was retroactively calling them "Top Secret."

Then there's the last bit, wherein cables originally classified as SECRET apparently have become TOP SECRET.

In his declaration, Panetta notes that some of the documents in the declaration were not marked properly:

Many of the operational communications were originally marked as SECRET in our communications database even though they should have been marked as TOP SECRET, and some of the miscellaneous documents were not properly marked. While we are not altering original electronic copies, this error is being corrected for copies printed for review in this case.

Given that Panetta uses the word "many," I assume this means more than just the one operational cable from HQ to Field, dated November 30, 2002, that is marked SECRET on the CIA's list of documents (I

believe the other documents marked SECRET are what Panetta treats as “miscellaneous” documents). So, first of all, there’s the funny detail that the CIA has been representing these documents to be TOP SECRET to Judge Hellerstein since at least May 1, yet they’re only now getting around to telling him (now that they’re turning some over for his review) that they were originally actually marked SECRET.

But here’s another funny detail. Similar cables from 2004 (see documents 54 and 55) were also marked SECRET (though some in the same series—particularly those from HQ to Field—were marked Top Secret). Now I have no way of knowing that these cables are exactly analogous (though I suspect they include discussions about whether to torture Hassan Ghul), but they do pertain to torture and detention.

So did they just discover all of these cables from the field should have been marked TOP SECRET from the start? Or did the rules change, once the program was designated—by people in NSC, not CIA—that it should be a special access program? Or is the SECRET designation a more recent phenomenon, one tied to the FOIA?

When I first noted this last year, I was concerned that Panetta was simply trying to raise the bar on releasing these cables—and he does seem to have been doing that. But I’m at least as concerned, now, that what CIA has revealed consists only of the “low side” communication between Thailand and Langley, but perhaps misses a lot of the “high side” communication. At the very least, this means we can’t necessarily look at patterns in what we do see to indicate anything conclusively about Abu Zubaydah’s torture.

One more thing. John Kiriakou has repeatedly made claims about Abu Zubaydah's treatment based on what he saw in cables. But if even internally, some CIA insiders were missing an entire set of cables, then it might explain some of the contradictory stories out there.

At the very least, these two details suggest where else we might have to look if we wanted a complete picture not only of Abu Zubaydah's treatment. But also of what kind of day-to-day involvement people like Alberto Gonzales had in that treatment.