

DID CIA MISREPRESENT INTERROGATION POLICY TO COURT IN PASSARO CASE?

I wrote in my last post on David Passaro that he knew precisely how to defend himself (go here for general background on Passaro and his case). Even before he was indicted, Passaro asked for discovery on CIA's rules of engagement for detainee interrogations, which he tied to SERE techniques well before the connection had been made publicly.

Which is why Passaro's requests—and CIA's refusals—for interrogation guidelines are so interesting. While much of those early discovery requests remain redacted, on November 18, 2004 Passaro requested:

- All memoranda from OLC on the capture, detention, and interrogation of members of the Taliban, al Qaeda, or other terrorist organizations operating in Afghanistan
- All memoranda from CIA's Office of General Counsel on the capture, detention, and interrogation of members of the Taliban, al Qaeda, or other terrorist organizations operating in Afghanistan
- “[C]omplete contents of the rules of engagement for the CIA that address the capture, detention, and/or

interrogation of the Taliban, al Qaeda, or other terrorist organizations or combatants operating in Afghanistan” including those categorized as “force protection targets”

- “[A]ll written documents, photographs, video, and sound recordings that contain the methods employed in Afghanistan by members of CIA, DOD, or OGA for the capture, detention, and/or interrogation of members of the Taliban, al Qaeda, or other terrorist organizations, or other combatants operating in Afghanistan, including policies and guidelines developed in early 2003 for use by Special Operations forces”
- “[A]ll orders, directives, and/or authorizations by President George W. Bush; ex-CIA Director George J. Tenet; the CIA Director of Operations; and the head of CIA’s Counterterrorist Center, Office of Military Affairs, or any other CIA component, that address the capture, detention, and/or interrogation of members of the Taliban, al Qaeda or

other terrorist organizations or combatants operating in Afghanistan”

- All information on Passaro’s training [my emphasis]

At some point (the document appears to have been sent on January 23, 2006), the government handed over the only such description it gave to Passaro’s team (see PDF 21), what they claim was a December 3, 2002 cable sent in support of operations in Afghanistan and along the Pakistan border.

When CIA officers are involved in interrogation of a detainee, the conduct of such interrogation should not encompass any significant physiological aspects (e.g., direct physical contacts, unusual mental distress, unusual physical restraints, or deliberate environmental deprivations)—beyond those reasonably required to ensure the safety and security of the detainee—without prior and specific headquarters guidance.

Now, the cable is interesting on its own right. It has not, to the best of my knowledge, appeared in any FOIA document dump or even Vaughn Declaration. Though we know that Langley sent a long cable to the Thai black site on November 30, 2002. And in the beginning of December there was cable traffic back and forth about closing that black site and destroying the torture tapes. The date certainly suggests the cable to Afghanistan might have been a response to Gul Rahman’s November 20, 2002 death at the Salt Pit, particularly with its prohibition on any “deliberate environmental deprivations.”

Note, too, the language the CIA used: “in support of ongoing CIA operations in Afghanistan and along the Pakistan border.” The reference to Pakistan sure sounds like a tacit admission that CIA was working in Pakistan already by that

point.

But the really disturbing part of this document is CIA's claim that this policy governed the interrogation of Abdul Wali in June 2003. After all, the month after they sent this cable, George Tenet issued Guidelines to cover the CIA interrogation of detainees, guidelines that "control" over guidelines previously sent by the Directorate of Operations. That is, Tenet's Guidelines, not the December 3, 2002 cable, would seem to have been the operative guidelines in June 2003.

And these guidelines, in addition to approving, as "standard" two of the three initial techniques used with Abdul Wali (sleep and food deprivation), also describe a set of Enhanced Techniques for use with approval by Headquarters. At least three of these Enhanced Techniques—walling, abdominal slap, wall standing, and stress positions—were also, arguably, the treatment used with Wali. He was repeatedly slammed against a wall, hit in the stomach, and forced to do the "iron chair" for at least an hour at a time.

While the document, by itself, doesn't say anything about whether or not the techniques would have been approved for use with Wali (I'll look at that closer in a follow-up post), it does seem that the CIA deliberately refused to turn over to the defense a document that would have shown some of the treatment used with Wali was not only (with approval) acceptable, but for some techniques, "standard."

Mind you, there are at least two ex parte filings that might include this document (or the other documents Passaro requested), one in November 2005 and one in January 2006. So the only question here is whether the government turned over the Tenet document to the Court, but not the defense.

But in any case, they certainly avoided admitting to the jury that CIA considered some of the techniques used with Wali standard.