

WILL THE CIA REGRET IT STARTED A WITCHHUNT AGAINST DETAINEE LAWYERS?

As I noted, DOJ charged former CIA officer Jon Kiriakou for allegedly leaking information relating to the CIA's torture program (as well as purportedly secret information about GPS tracking that is not secret).

But remember how this investigation started: as an effort to implicate Gitmo detainees' lawyers.

1) DOJ has been investigating the John Adams Project since last August to find out how photographs of torturers got into the hands of detainees at Gitmo. The JAP has employed a Private Investigator to track down likely interrogators of detainees, to take pictures, get a positive ID, and once done, call those interrogators as witnesses in legal proceedings. DOJ appears concerned that JAP may have made info-learned confidentially in the course of defending these detainees-available to those detainees, and therefore violated the protective order that all defense attorneys work under. Yet JAP says they collected all the info independently, which basically means the contractors in question just got caught using bad tradecraft.

2) DOJ appears to believe no crime was committed and was preparing a report to say as much for John Brennan, who will then brief Obama on it.

3) But CIA cried foul at DOJ's determination, claiming that because one of the lawyers involved, Donald Vieira, is a former Democratic House Intelligence staffer, he is biased.

They seem to be suggesting that Vieira got briefed on something while at HPSCI that has biased him in this case, yet according to the CIA's own records, he was not involved in any of the more explosive briefings on torture (so the claim is probably bullshit in any case). After CIA accused Vieira of bias, he recused himself from the investigation.

4) So apparently to replace Vieira and attempt to retain some hold on DOJ's disintegrating prosecutorial discretion, DOJ brought in Patrick Fitzgerald to pick up with the investigation. Fitz, of course, a) has impeccable national security credentials, and b) has the most experience in the country investigating the Intelligence Identities Protection Act, having investigated the Torturer-in-Chief and his Chief of Staff for outing CIA spy Valerie Plame. In other words, DOJ brought in a guy whom CIA can't bitch about, presumably to shut down this controversy, not inflame it.

Now, it appears that the CIA's concerns were included in the memo to Brennan over DOJ's wishes. Or perhaps Fitz is just going to review the case. And if the JAP people did, as they say, use only external information to ID these torturers, then they are likely legally safe and the involvement of Fitz is simply going to quiet down the controversy.

The investigation appears to have led to Kiriakou by tracing backwards through—presumably—John Sifton (who led the John Adams Project work) to his source, an as-yet unidentified journalist, and from him to Kiriakou.

Now, as a threshold matter, the investigation completely exonerated the detainee lawyers.

According to the complaint affidavit, the investigation determined that no laws were broken by the defense team as no law prohibited defense counsel from filing a classified document under seal outlining for a court classified information they had learned during the course of their investigation. Regarding the 32 pages of photographs that were taken or obtained by the defense team and provided to the detainees, the investigation found no evidence the defense attorneys transmitting the photographs were aware of, much less disclosed, the identities of the persons depicted in particular photographs and no evidence that the defense team disclosed other classified matters associated with certain of those individuals to the detainees. The defense team did not take photographs of persons known or believed to be current covert officers. Rather, defense counsel, using a technique known as a double-blind photo lineup, provided photograph spreads of unidentified individuals to their clients to determine whether they recognized anyone who may have participated in questioning them. No law or military commission order expressly prohibited defense counsel from providing their clients with these photo spreads.

More interesting, the investigation led to a guy who was leaking very helpful propaganda to ABC in December 2007, claiming that Abu Zubaydah was only waterboarded once, and it succeeded in "breaking" him in less than 35 seconds.

A leader of the CIA team that captured the first major al Qaeda figure, Abu Zubaydah, says subjecting him to waterboarding was torture but necessary.

In the first public comment by any CIA officer involved in handling high-value

al Qaeda targets, John Kiriakou, now retired, said the technique broke Zubaydah in less than 35 seconds.

“The next day, he told his interrogator that Allah had visited him in his cell during the night and told him to cooperate,” said Kiriakou in an interview to be broadcast tonight on ABC News’ “World News With Charles Gibson” and “Nightline.”

“From that day on, he answered every question,” Kiriakou said. “The threat information he provided disrupted a number of attacks, maybe dozens of attacks.”

Now, the charges against Kiriakou derive from alleged leaks dating back to May 2007—7 months before Kiriakou’s CIA-helpful propaganda.

But he was not charged for the CIA-helpful propaganda (though it is possible that Brian Ross was one of the journalists to whom he allegedly leaked).

If I’m Jon Kiriakou, the very first thing I do in discovery is ask for any internal CIA discussion of that on-the-record leak, the one CIA hasn’t charged but that helped them. Because he would be able to show, almost immediately, that CIA doesn’t give a damn if its “secrets” are leaked in ways that are useful for their propaganda.

I’m guessing Kiriakou mounts a very successful graymail defense. But possibly not before CIA regrets inciting a witchhunt against detainee lawyers.

Update: David Petraeus’ statement on this leak to CIA officers sounds pretty sheepish, especially this bit. (h/t Laura Rozen)

I want to take this opportunity to ask you to remember the following: in return for the secrecy we need to do our work, the American people and our elected

representatives expect us to uphold our nation's laws and values. When we joined this organization, we swore to safeguard classified information; those oaths stay with us for life. Unauthorized disclosures of any sort—including information concerning the identities of other Agency officers—betray the public trust, our country, and our colleagues. Given the sensitive nature of many of our Agency's operations and the risks we ask our employees to take, the illegal passage of secrets is an abuse of trust that may put lives in jeopardy. Thanks to each of you for keeping all this in mind as we work together to perform missions of great importance to our country.

Update: "Indicted" corrected to "charged."